IN THE

Supreme Court of the United States

OCTOBER TERM, 1940.

No. 372

WILLIAM G. WALL,

Petitioner,

vs.

STATE BOARD OF BAR EXAMINERS OF THE STATE OF NEW JERSEY,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE NEW JERSEY SUPREME COURT AND BRIEF IN SUPPORT THEREOF.

WILLIAM G. WALL,
Attorney in pro. per.,
A member of the Bar of the United States Supreme Court.

case?

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PETITION FOR WRIT OF CERTIORARI TO THE NEW JERSEY SUPREME COURT.

Summary Statement of Matter Involved.

Petitioner, a member of the Bar of this United States Supreme Court, and an actively engaged, practicing Counsellor at Law of the State of New York since April 1929, although a native born and practically life-long resident of the State of New Jersey, maintaining an office, in the Borough of Manhattan, City and State of New York, seeks a review of the final judgment of the New Jersey Supreme Court and of the New Jersey Court of Errors and Appeals unjustly denying Petitioner relief in connection with the review and remarking of his examination papers on April 1939 New Jersey examination for admission as Attorney in that State, and further exacting from Petitioner the unreasonable requirement that Petitioner serve a four months' clerkship in the law office

of a Counsellor at Law in the State of New Jersey prior to his being allowed to take a re-examination for admission as Attorney in said State. The ruling by the New Jersey Supreme Court requiring Petitioner to now serve a four-months' clerkship before being permitted a re-examination is in direct conflict with, and contrary to, a previous ruling of said New Jersey Court in a case having precisely the same set of facts as those surrounding this Petitioner. These said rulings of the State Courts impose an unreasonable hardship and burden upon Petitioner, deprive him of his certain property rights without due process of law, unjustly discriminate against him and deny him the equal protection of laws, contrary to the provisions of the United States Constitution and that of the State of New Jersey.

This judgment of the New Jersey Supreme Court, dated October 11, 1939, filed October 17, 1939 (R. 50) and the decision of the said Court on Petitioner's motion for re-argument, dated November 17, 1939 and the order entered and filed thereon on January 29, 1940 (R. 51-58) were appealed by Petitioner to the New Jersey Court of Errors and Appeals, which, by its Rule dated April 25, 1940, and filed May 24, 1940, declined to take jurisdiction of this Petitioner's appeal and dismissed same. The holding of the Court of Errors and Appeals is to the effect that, even under the anomalous system of admission of Attorneys and Counsellors in the State of New Jersey, the matter rested solely in the New Jersey Supreme Court (which has absolutely no power to admit Attorneys or Counsellors). The questions raised in Petitioner's appeal to said Court of Errors and Appeals were not therefore passed upon nor were they mentioned, argued or opposed by Respondent Board in its brief before that Court.

Statement of Facts.

Petitioner, a life-long resident of the State of New Jersey (except from December 1927 to May 1929 when he was a resident of New York) and a continuous resident thereof since May 1929 to date, is a licensed Attorney and Counsellor at Law of the New York Bar since April 30, 1929, and admitted to practice in this United States Supreme Court since 1937, applied for admission, under the rules prescribed by the New Jersey Supreme Court for admission as Attorney at Law in that State and took the New Jersey Bar Examination for Attorney on April 13 and 14, 1939. Prior to taking said examination Petitioner complied with all the rules and regulations of said Court and the Respondent New Jersey State Board of Bar Examiners.

In June 1939, Petitioner was advised by the Respondent Board that he failed to pass said examination. In early July 1939 Petitioner conferred with the Chairman of Respondent Board of Bar Examiners. Said the Chairman to Petitioner, concerning Petitioner's examination:

> "You are the 'real tragedy' of the examination; yours is a 'twilight zone case'; your mark was such that you could have 'passed' or 'failed', but unfortunately you 'failed' to 'pass'; but you have an 'excellent paper'" (R. 2).

This statement lead Petitioner to believe that he "failed" said examination by a point or fraction thereof under the required 267 points of the possible 400 points on said examination. After carefully rechecking all answers on said examination, and allowing for every possible contingency, Petitioner's minimum rating should be in excess of 300 points. Upon again taking the matter up with the State Board of Bar Examiners, Petitioner was

informed that before he would be permitted to take a re-examination, at the October 1939 term of the New Jersey Supreme Court, he would have to serve a four-months' clerkship in the office of a New Jersey Counsellor at Law.

Petitioner's examination papers are ungraded on their face, and to date Petitioner has yet to be advised of the rating he was given by the Board of Bar Examiners on his said bar examination. All his efforts to obtain his marks have been futile.

Relying on an unreported case in the State of New Jersey (*In re Kraft*) as a precedent (R. 3), (Appendix 3), Petitioner in September 1939, filed a Petition in the New Jersey Supreme Court for a review and a re-marking of his examination papers on the April 1939 bar examination of that State, and in the alternative, if this relief were denied, for an order compelling the Clerk of the New Jersey Supreme Court to add Petitioner's name to the list of those entitled to take the October 1939 New Jersey Bar Examination for Attorney. As heretofore stated the New Jersey Supreme Court denied Petitioner's application in toto, except that it stated that it had reviewed the examination papers of the Petitioner, but had no fault to find with the Respondent Board of Bar Examiners. The New Jersey Supreme Court, contrary to its previous ruling in a case on all fours with Petitioner's (R. 5, 6), insisted, for reasons unknown to Petitioner, that Petitioner must serve a four-months' clerkship prior to taking a re-examination for admission as attorney in that State.

Upon application for reconsideration and re-argument in the matter before the New Jersey Supreme Court (R. 51), Petitioner's application was denied without change in result and without opinion (R. 57). Immediately after re-argument one of the Supreme Court Justices also remarked to Petitioner that Petitioner had an "excellent

paper" on his said examination. Petitioner was likewise unable to get his marks from the Supreme Court.

An order of the New Jersey Supreme Court on the motion for reargument was entered on January 29, 1940 (R. 58). On February 7, 1940, Petitioner appealed these decisions of the New Jersey Supreme Court to the New Jersey Court of Errors and Appeals (R. 59). In a decision dated April 25, 1940, the New Jersey Court of Errors and Appeals denied Petitioner relief, merely holding that it had no jurisdiction in the matter.

Thereafter a personal appeal by Petitioner to the Governor of the State of New Jersey was of no avail. His Excellency, inadvertently overlooking his own powers and unmindful of the fact that the power of the New Jersey Supreme Court regarding admission of Attorneys and Counsellors at Law is purely recommendatory, expressed the opinion to Petitioner that the sole power of admission of Attorneys in that State rested with its Supreme Court.

For years it has been common knowledge that the State of New Jersey is unjustly discriminating against Counsellors from the State of New York. Several eminent, matured and prominent Counsellors of the New York Bar have personally contacted Petitioner since April 1940 and stated that they took but never "passed" the New Jersey Bar Examinations for admission as Attorneys; that any such examination is practically an impasse for a member of the New York Bar, which is being unduly discriminated against; that regarding admission of Counsellors from New York, New Jersey is virtually a "closed corporation".

It is to be noted that in keeping with this stringent policy the New Jersey Legislature passed an Act, effective July 1, 1939 (apparently aimed at Attorneys and Counsellors from the State most proximate to its northern

boundaries) restricting the allowance of fees for legal services in New Jersey to New Jersey practitioners and providing that the allowance of any such fees to Counsel from foreign states must be subject to the allowance by and approval of the New Jersey Courts (New Jersey Public Laws 1939, Chapter 140; Revised Statutes 2:20-9 (Appendix 3)).

The Petitioner, having exhausted his remedies in the Courts of the State of New Jersey now respectfully requests this United States Supreme Court for relief in the premises.

One of the important grounds upon which the application of the Petitioner for a writ of certiorari herein is based is Rule 11 of the New Jersey Supreme Court (Appendix 2), and in particular its application to candidates for admission to the Bar in New Jersey both prior and subsequent to February 14, 1931, as well as its discrimination against foreign attorneys.

On June 28, 1940 this Petitioner made known to the Chief Clerk of the New Jersey Supreme Court, who is also Secretary to the Respondent State Board of Examiners, the fact that the Petitioner intended to apply to the United States Supreme Court for relief in these proceedings, and accordingly requested a certified copy of the entire record.

It is interesting to state here that shortly thereafter, on July 5, 1940, the New Jersey Supreme Court abrogated Rule 11.

Jurisdiction.

The Petitioner says that the Supreme Court of the United States has jurisdiction to review this cause on certiorari because:

1. This petition for certiorari is filed under the provisions of the Act of 1925 c. 229 Sec. 1 (43 Stat. 937

Judicial Code, Sec. 237, 28 USCA 344b), wherein it is provided that it shall be competent for the Supreme Court by certiorari to review a final judgment of the highest court of a State where any title, right, privilege or immunity is expressly set up or claimed by either party under the Constitution. In this cause the Petitioner has asserted the right under the Constitution of the United States to be entitled to the full possession and enjoyment of his certain property rights; that the Petitioner is not to be denied the equal protection of laws; that there should not be imposed upon the Petitioner the unreasonable and burdensome regulation and ruling of the New Jersey Supreme Court requiring Petitioner to serve a four months' clerkship in New Jersey after eleven years continuous, active practice as a Counsellor at Law in the State of New York, in good standing, contrary to a previous decision of said New Jersey Supreme Court in a case exactly identical with that of this Petitioner; further that Petitioner, under Rule 11 of the New Jersey Supreme Court (in effect February 14, 1931 (Appendix 2)), although he, while a voting resident of New Jersey, "matriculated in an approved law school", prior to the date of the promulgation of the rule, to wit September 16, 1925 (R. 23), is unjustly discriminated against as an Attorney from a foreign state, and in accordance with the last clause of said rule accordingly denied the equal protection of laws, although Petitioner is a native-born and practically life-long resident of the State of New Jersey and in the same category and class (except that he also happens to be a Counsellor at Law in the State of New York) as any candidate for admission to the Bar of the State of New Jersey who came within the protection of Rule 11 (prior to July 5, 1940); Petitioner lawfully comes within the provisions of the New Jersey Supreme Court rules existing prior to February

14, 1931, and in particular Rule 3 thereof which contains the words merely that a candidate for admission as an attorney "shall first submit himself to an examination as hereinafter provided and thereupon give satisfactory evidence of his learning in the law and his knowledge of the practice thereof as established in this State" (Appendix 1).

This the Petitioner has done and rests upon his examination answers (R. 8-22, 25-49) herein as full compliance with Rule 3. In such an instance Petitioner's examination papers need not be graded. A reading of same will show satisfactory compliance with Rule 3. In addition Petitioner asserts he unequivocally passed said examination and likewise rests on his said answers (R. 8-49).

The statements by the Chairman of the Respondent Board and also by one of the Supreme Court Justices, after the re-argument, are admissions that Petitioner has fully complied with Rule 3, above stated (Appendix 1).

2. The questions involved are substantial because Petitioner is being unduly imposed upon, deprived arbitrarily, illegally, and without due process of law of his certain property right in said examination, his papers unjustly rated, either inadvertently or otherwise, for reasons presently unknown to Petitioner, but apparently brought about by prejudice for reasons hereinafter stated. The State of New Jersey has an anomalous system for attorneys and counsellors at law. It is perhaps the only state in the Union wherein an applicant for admission to the Bar is not admitted by the Court itself. About forty of our forty-eight states admit qualified Counsellors of foreign states on motion. Four of the remaining eight states, exclusive of the District of Columbia, require spe-

cial examinations which may be waived. New Jersey is one of the four remaining states insisting upon examination of duly qualified Attorneys and Counsellors from foreign states. ("Rules for Admission to the Bar", West Publishing Company (1939); Martindale-Hubbell Law Digest (1940).) Petitioner states that he believes that no Justice of this United States Supreme Court has ever experienced the exactment of such a far in the minority, unreasonable requirement. As we have Uniform Laws dealing with Negotiable Instruments, Partnership, Warehouse Receipts, etc., there should also be a Uniform codified set of laws regarding the admission of attorney and counsellors in the various states of the Union including District of Columbia. This for the protection of the legal profession in general. In New Jersey the power of the Supreme Court in connection with the admission of Attorneys is as already stated, purely and solely recommendatory. It recommends the applicant, after examination, to the Governor of the State for commission as Attorney or Counsellor at Law, as the case may be, and the Governor commissions the successful applicant as Attorney or Counsellor by letters patent (*In re Branch*, 41 Vroom 537, 576, 70 N. J. L. 537, 576, 57 Atl. 435).

3. The New Jersey Supreme Court failed or refused to take cognizance of the fact that Petitioner comes within its rules existing prior to 1931. It over-ruled itself *In re Natelson* (R. 5, 6) and seeks to unreasonably exact a four-months clerkship from Petitioner, the service of which it held unnecessary in the *Natelson* case. It flagrantly discriminates against Petitioner. It characterized the Petitioner from the Bench (Mr. Justice Case) as a "law student". It overlooked the fact that the Petitioner has had practice experience in the New Jersey

Courts, in a proceeding entitled *Wall* v. *Board of Education* (*infra*), wherein he practiced as an Attorney in that State, pro hac vice, both in its lower tribunals, its Supreme Court and its Court of Errors and Appeals (R. 3).

4. Petitioner knows no reason why his papers were unjustly marked and believes he is entitled to his rating on said examination. His examination papers are still ungraded. He has not been given a hearing on them by Respondent Board. Petitioner is a member, in good standing, of both the Bar of the United States Supreme Court and of the State of New York. During his eleven years of practice he has never once been censured or has had to appear before any bar or character committee. With no reflection on the Judiciary of the State of New Jersey nor upon any member of the respondent Board, and with due apology, the only reason Petitioner can advance for the unjust treatment he has received in this entire matter is the fact that he had the temerity to go to the assistance of his sister, a school teacher in the High Schools of Jersey City, who was illegally dismissed from her position in 1936. Your Petitioner claimed she had tenure of office. In this proceeding, *Margaret M. Wall* v. *Board of Education of the City of Jersey City in Hudson County* (119 N. J. L. 308, 196 Atl. 663), Petitioner obtained in the New Jersey Supreme Court an affirmance of an order by a lower appellate tribunal for re-instatement and payment of back salary to his sister. After delay by the Jersey City Board of Education of over fifteen months, and during her unemployment, Petitioner had its appeal to the New Jersey Court of Errors and Appeals dismissed in said proceeding for lack of prosecution, much to distress, dissatisfaction and chagrin of the local powers that be. Although lacking in direct proof Petitioner knows voices were

bruited about prior to the time the results of the April 1939 bar examination were announced that Petitioner would "repent and respond in the near future". Upon announcement of the successful candidates in June 1939, the reputed author of the above statement, is said to have smilingly stated "You didn't expect him (meaning Petitioner) to pass, did you?" Petitioner believes that his examination papers are used only as a pretext to prevent his admission as an attorney of the Bar of the State of New Jersey.

5. The Federal questions, some of which arose per se after the opinion of the New Jersey Supreme Court and the denial of Petitioner's Motion for re-argument of the matter (R. 57) were first raised by the Petitioner in the petition dated September 11, 1939 and again upon the Petition for re-argument before the said Court (R. 3-6, 50-66).

At all times Petitioner believed that the New Jersey Supreme Court would follow *In re Natelson* (R. 6) which it did not. Likewise in the subsequent proceedings the Petitioner raised these Federal questions on appeal to the New Jersey Court of Errors and Appeals,* the highest court in that State.

6. While there have been cases regarding admission of persons as Attorneys decided by the United States Supreme Court, it suffices to say Petitioner's cause is not

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* Under New Jersey practice the only ground for appeal is that "the Court below erred". Hence, no detailed specifications of grounds appear in the notice (R. 59). That form of Notice preserves all the grounds of appeal previously urged. The appropriate sections of the brief filed with the Court of Errors and Appeals (Points II and IV) are annexed hereto (Appendix 5) and shows that the constitutional questions herein were not abandoned.

only unique but without precedent. It concerns Federal questions of substance, in a special set of facts and circumstances, not heretofore determined by this Court (Rule 38, Par. 5(a), Revised Rules of U. S. S. C., February 1939). Petitioner also states that in his opinion his within cause is eminently worthy of consideration by this Court.

Questions Presented.

1. May the New Jersey Supreme Court refuse to grant to this Petitioner the protection given under its certain Rule 11 (in effect February 14, 1931), Petitioner being a native born resident of the State of New Jersey and having "matriculated in an approved law school" prior to that date, namely, September 16, 1925?

2. May the New Jersey Supreme Court lawfully impose upon Petitioner the unreasonable requirement that Petitioner serve a four months' clerkship in the office of a Counsellor at Law in the State of New Jersey, although Petitioner has been actively engaged as a practicing Counsellor at Law in the State of New York for over eleven years, before Petitioner is granted permission to take another examination for admission as an attorney in the State of New Jersey?

3. Did not the New Jersey Supreme Court unjustly discriminate against Petitioner by failing to take cognizance of the fact that Petitioner comes within its rules existing prior to 1931, and further by failing to follow its decision *In re Natelson* (3 N. J. Misc. 549, 129 Atl. 183)? (R. 5.)

4. Did the New Jersey Supreme Court legally deny Petitioner the equal protection of laws by failing to ac-

cord him, as an Attorney from a foreign state, the same protection it does, or did prior to July 5, 1940, accord New Jersey candidates for admission to the Bar under Rule 11?

5. Did the New Jersey Supreme Court erroneously characterize Petitioner solely as an Attorney from a foreign state, when in fact Petitioner is a native born, practically life-long resident of the State of New Jersey?

6. Did the New Jersey Supreme Court unjustly, arbitrarily and as a matter of policy (Appendix 3) sustain the ruling of the respondent State Board of Bar Examiners in its decision that Petitioner failed to pass his bar examination in April 1939, although Petitioner's papers are ungraded and he has not received his rating to date?

7. Did the New Jersey Supreme Court err in holding Petitioner failed to pass the examination since under Rule 3 (Appendix 1) he had merely upon examination for Attorney "to give satisfactory evidence of his learning in the law and his knowledge of the practice thereof as established in the State of New Jersey"?

8. Were the decisions of the New Jersey Supreme Court arbitrary and determined more by expediency than by law, influenced by passion or prejudice or predicated on sound premises and valid reasoning?

9. Should not the New Jersey Supreme Court have permitted Petitioner, since it insisted upon an examination before Petitioner's admission to practice in that State, to take the New Jersey State examination for admission as Counsellor at Law (Rule 6(a), Appendix 1) so that Petitioner, upon passing said examination and

being thus admitted in the State of New Jersey, would be on a same footing and status commensurate with his standing as a Counsellor at Law in the State of New York?

10. Was not the New Jersey Supreme Court lacking in full power to summarily pass upon Petitioner's examination papers and deny him permission to take a re-examination until the requirements of a four months' clerkship have been met, when the power of the New Jersey Supreme Court in this connection is but recommendatory, the final decision resting with the Governor of the State of New Jersey?

Reasons Relied on for Allowance of Writ of Certiorari.

The reasons relied on for the allowance of this writ of certiorari are as follows:

1. By denying Petitioner the protection and benefit of its rules in existence prior to February 14, 1931 and by not following the *Natelson* decision, 3 N. J. Misc. 549, the New Jersey Supreme Court has denied to the Petitioner his right under Sec. 1, Amendment XIV of the United States Constitution to enjoy his certain property, and also denies him the equal protection of the laws in that the New Jersey Supreme Court does not grant "foreign attorneys" the same privileges or immunities granted to New Jersey candidates for admission to the bar.

2. The New Jersey Courts have thus denied to the Petitioner his right under Sec. 1, Article 1 of the New Jersey Constitution (Appendix 3) to enjoy, acquire

and protect property and also the right of the pursuit of happiness.

3. The decision of the New Jersey Supreme Court is contrary to law in that it is arbitrary, despotic and not guided, exercised or regulated by a sound and just judicial discretion. Ex parte Secombe 19 How. (U. S.) 9.

4. While it is somewhat immaterial, because of the peculiar system of admission of Attorneys in the State of New Jersey, that the New Jersey Court of Errors and Appeals did not take jurisdiction of the Petitioner's Appeal since it has intimated that no adverse result would have been attained, nevertheless, because of the flagrant injustice done this Petitioner, Petitioner's examination papers should be reviewed by the Highest Court in an instance where there is an adverse recommendation not based on sound premises and valid reasoning, particularly for the reason that in accordance with Sec. 1, Article VI, of the New Jersey Constitution (Appendix 3), the judicial power of the State of New Jersey is vested in the Court of Errors and Appeals "in the last resort in all causes". *In re Cooper*, 22 N. Y. 67; *In re Salot*, 45 P. (2d) 203.

5. Since the New Jersey Supreme Court has characterized Petitioner "as an attorney from a foreign state", it places Petitioner in the same category as a citizen of the State of New York. Accordingly the Court in this respect has denied to the Petitioner his right to be entitled to all privileges and immunities of citizens in the several States under Sec. 2, Par. 1 of Article IV of the United States Constitution.

6. The decision of the highest court of a State, or the highest court therein having jurisdiction, is review-

able by the United States Supreme Court in an instance where a question is raised by a conflicting decision of the said Court.

Randall v. *Brigham*, 7 Wall. (74 U. S.) 523, 541; *Selling* v. *Radford*, 243 U. S. 46, 51, 52.

7. Petitioner concedes, following *Keeley* v. *Evans*, 271 Fed. 520, that the right to practice law in a sister state is not one of the privileges and immunities granted citizens of the different states under Sec. 2, Par. 1 of Article IV and under Sec. 1, Amendment XIV of the United States Constitution, but Petitioner states that, having submitted to an examination and having satisfied all the New Jersey requirements, he is being unjustly deprived of his certain property right in his said 1939 Bar examination without due process of law, is being denied the equal protection of laws in the State of New Jersey in the sense that he is not accorded these privileges and immunities because of discrimination against him as an attorney from a foreign state.

8. Petitioner's within case is unprecedented, and in all previous decisions in both the United States Supreme Court and other Federal Courts, dealing with the right of Attorneys and Counsellors to practice law in various states, Petitioner finds no instance where any of the appellants were members of the Bar of the United States Supreme Court and had been unjustly denied admission in a sister state under the facts and circumstances surrounding the present predicament of this Petitioner.

9. That in the event Petitioner is not given relief by the United States Supreme Court, he has no further recourse and will never be permitted to become either an Attorney or Counsellor at law of the New Jersey Bar.

That all prior petitions, as well as the within Petition, have undoubtedly prejudiced the respondent New Jersey State Board of Bar Examiners, the New Jersey Supreme Court, and the New Jersey Court of Errors and Appeals. That even if Petitioner did serve a four months' clerkship, which under existing circumstances is impossible since it for one reason, among others, would require the petitioner to give up for a four month period his practice in the State of New York, upon which Petitioner and his family are dependent for support, there is considerable doubt, for reasons hereintofore set forth, that reexamination of the Petitioner would prove satisfactory to the respondent Board or its parent Tribunal.

10. The Court has decided aforesaid Federal questions of substance not theretofore determined by the United States Supreme Court and in a way probably not in accord with applicable decisions of this Honorable Court.

11. The case is of peculiar gravity and of both special and general importance. Basic constitutional rights in New Jersey for the last decade have been continuously violated and suspended with impunity; and this, in a State in which an individual, as a one man power, has publicly proclaimed himself as "The Law".

WHEREFORE, because of the importance of the questions involved and for the reasons herein set forth your Petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Court directed to the Supreme Court of the State of New Jersey, to which the matter was remitted by New Jersey Court of Errors and Appeals (R. 61-62), commanding said Court to secure and send to this Court on a day certain to be

therein designated, a full and complete transcript of the record and proceedings of the Court in the case of your Petitioner which was therein entitled in the matter of Petition of William G. Wall, for a review and remarking of his examination papers of April 1939 Bar Examination and in the alternative to compel the Clerk of the Supreme Court to add his name to the list of those entitled to take the Bar Examination October 19, 20, 1939, William G. Wall, Appellant, State Board of Bar Examiners, Respondent, No. 10030, No. 418 October 1939 Term New Jersey Supreme Court, and No. 41 February 1940 Term of New Jersey Court of Errors and Appeals to the end that said cause may be reviewed and determined by this Court as provided by Section 237 of the Judicial Code as amended by the Act of February 13, 1925, and the Rules of this Court and that your Petitioner may have such other and further relief or remedy in the premises as this Court may deem appropriate and in conformity with the provisions of said Code, and the Rules of this Court and that the judgment of the Supreme Court of New Jersey and of the New Jersey Court of Errors and Appeals be reversed.

WILLIAM G. WALL,
Attorney in pro. per.,
Member of the Bar of the
United States Supreme Court.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI.

Opinions of Court Below.

The opinion of the New Jersey Supreme Court is unreported, but may be found at pages 50-51 of the Record. Likewise the opinion on the Petition for a reargument in November 1939 is unreported (R. 57). Contrary-wise *In re Natelson* was reported (New Jersey Supreme Court), 3 N. J. Misc. 549, 129 Atl. 183. The opinion of the New Jersey Court of Errors and Appeals in this cause has not as yet been officially reported but may be found at pages 64-66 of the Record and in the New Jersey law advance sheets for June 8, 1940, at page 560 (124 N. J. Law 560).

Jurisdiction.

Jurisdiction is invoked under Section 237 of the Judicial Code (28 USCA 344b) and Rule 38 paragraph 5 (a) of this Court. The judgment appealed from the New Jersey Court of Errors and Appeals was remitted by said Court to the New Jersey Supreme Court and order filed on May 24, 1940 (R. 62), and the foregoing Petition is to be filed on August 24, 1940.

Petitioner claims that he has been denied the right to be entitled to all privileges and immunities of citizens in the several States existing under Section 2 Paragraph 1 of Article IV of the United States Constitution for the reason that R. 11 (abrogated July 5, 1940) of the New Jersey Supreme Court, as applied to foreign attorneys and New Jersey native candidates for admission to the Bar, unjustly discriminates against him, although he has

submitted to the examination and fulfilled all the New Jersey requirements.

Petitioner claims that he has been deprived of his certain property rights, that his privileges and immunities have likewise been abridged without due process of law and that he has been denied the equal protection of laws within the jurisdiction of the State of New Jersey in violation of Section 1, Amendment XIV of the United States Constitution.

Petitioner also claims he has been denied the right to acquire, possess and protect his certain property rights and of the pursuit of happiness, existing under Paragraph 1 of Article I of the New Jersey State Constitution (Appendix 3).

Petitioner claims he has been unjustly discriminated against for the reason that the New Jersey Supreme Court reversed itself and did not follow *In re Natelson* (*supra*) and that such a conflicting decision is reviewable by the United States Supreme Court which has jurisdiction (*Randall* v. *Brigham*, 7 Wall (74 U. S.) 523, 541; *Selling* v. *Radford*, 243 U. S. 46, 51, 52; *In re Cooper*, 22 N. Y. 67; *Ex parte Bradley*, 7 Wall (74 U. S.) 364, 379; *Ex parte Burr*, 9 Wheat. (22 U. S.) 529, 531).

Statement of Facts.

The Petitioner a lifelong resident of the State of New Jersey, except from December 1937 to May 1929, when he was a resident of New York, has continuously resided in New Jersey since May 1929 to date. Petitioner, a duly licensed attorney and counsellor at law of the New York Bar since April 30, 1929 and admitted to practice in this United States Supreme Court since 1937, applied for admission as attorney in the State of New Jersey under the rules prescribed by the New Jersey Supreme

Court and took the New Jersey Bar Examination for Attorney on April 13, 14, 1939. Prior to taking said examination Petitioner complied with all the rules and regulations of the New Jersey Supreme Court and of the Respondent Board of Bar Examiners. In June, 1939 Petitioner was advised by Respondent that he failed to pass said examination. In early July, 1939 Petitioner conferred with the Chairman of Respondent Board of Examiners and was told the following concerning Petitioner's examination.

> "You are the 'real tragedy' of the examination; yours is a 'twilight zone case'; your mark was such that you could have 'passed' or 'failed', but unfortunately you 'failed' to 'pass', but you have an 'excellent paper'" (R. 2).

The foregoing statements lead the Petitioner to believe that he "failed" to pass the examination by a point or fraction thereto under the required 267 points of the possible maximum 400 points on said examination. After carefully re-checking all answers on said examination, and allowing for every possible contingency, Petitioner states, as a member of the Bar of the State of New York and of the Bar of this United States Supreme Court, that it is his firm belief that his minimum rating on said examination should have been in excess of 300 points.

Of 313 applicants who took the April 1939 bar examination for admission as Attorney in New Jersey, only 143 were certified by the Respondent Board as having "passed". Upon again taking the matter up with the Respondent Board (R. 5-8) Petitioner was informed that before he would be permitted to take a re-examination at the October, 1939 term of the New Jersey Supreme Court, he would have to serve a four months' clerkship in the office of a New Jersey counsellor at law. Shortly thereafter Petitioner as a Reserve Officer was ordered to

Active Duty with the United States Army in August, 1939 on First Army Manoeuvers and was not relieved therefrom until August 26, 1939.

Petitioner's examination papers are unmarked and ungraded on their face. To the date of this Petition he has yet to be advised of the rating he was given by the Respondent Board on his said Bar Examination. All his efforts to obtain his marks from the New Jersey Supreme Court have been futile. Nor has the Respondent Board granted the Petitioner the privilege of being heard on the merits of his said examination answers. Relying on an unreported case, *In re Bayard R. Kraft*, N. J. Law Journal (1917), page 164 (Appendix 3), as a precedent (R. 3) Petitioner in September 1939 filed a petition in the New Jersey Supreme Court for a review and a re-marking of his answers on the April 1939 Bar Examination, and in the alternative if this relief were denied, for an order compelling the Clerk of the New Jersey Supreme Court to add Petitioner's name to the list of those entitled to take the October, 1939 Bar Examination for Attorney. As heretofore stated the New Jersey Supreme Court denied Petitioner's application *in toto*, failed to follow its previous ruling *In re Natelson* (*supra*), except that it stated it had reviewed the examination papers of the Petitioner but had no fault to find with the Respondent Board of Bar Examiners. The New Jersey Supreme Court, reversing its ruling in the *Natelson* case which is on all fours with that of this Petitioner (R. 5-6), insisted, for reasons unknown to petitioner that petitioner must serve a four months' clerkship prior to being permitted to take a re-examination for admission as Attorney in that State. Upon application for re-argument before the Supreme Court (R. 51-56) Petitioner's application was denied without change in result and without opinion (R. 57).

Immediately after the re-argument one of the Supreme Court Justices also remarked to Petitioner that Petitioner had an "excellent paper" on his said Bar Examination. Is such a repeated statement tantamount to an admission that petitioner has satisfactorily complied with Rule 3? (Appendix 1.)

The order of the Supreme Court was entered on January 29, 1940 (R. 58). On February 7, 1940 Petitioner appealed this decision of the New Jersey Supreme Court to the Court of Errors and Appeals in that State (R. 59).

In an opinion dated April 25, 1940 (R. 64-66) the New Jersey Court of Errors and Appeals denied Petitioner relief, merely holding that it had no jurisdiction in the matter. This ruling dismissing the appeal and the order remitting same to the New Jersey Supreme Court was filed by Petitioner on May 24, 1940 and filed in the New Jersey Supreme Court on June 5, 1940 (R. 62). Although this ruling and order are dated April 25, 1940 no copy thereof was ever served on the Petitioner, who having now exhausted his remedies in the Courts of the State of New Jersey respectfully requests this United States Supreme Court for relief in the premises. Subsequent to April 25, 1940 a personal appeal by Petitioner to the Governor of the State of New Jersey was of no avail. His Excellency, inadvertently overlooking his own powers and unmindful of the fact that the power of the New Jersey Supreme Court regarding admission of Attorneys and Counsellors at Law in that State is purely recommendatory, expressed to the Petitioner the opinion that the sole power of admission of Attorneys in that State rested with its Supreme Court.

For years it has been common knowledge that the State of New Jersey is unjustly discriminating against Coun-

sellors from the State of New York. Several eminent, matured and prominent Counsellors of the New York Bar have personally contacted Petitioner since April 1940 and stated that they took but never "passed" the New Jersey Bar Examination for admission as Attorneys; that any such examination is practically an impasse for a member of the New York bar, which is being unduly discriminated against; that regarding the admission of Counsellors from New York to the New Jersey Bar, New Jersey is virtually a "closed corporation".

In passing it is to be noted that in keeping with this stringent policy the New Jersey Legislature passed an Act effective July 1, 1939 (apparently aimed at Attorneys and Counsellors from the State most proximate to its northern boundaries) restricting the allowance of fees for legal services in New Jersey to but New Jersey practitioners and providing that the allowance of any such fees to Counsel from foreign jurisdictions must be subject to the approval of the New Jersey Courts (New Jersey Public Laws 1939, Chapter 140, Revised Statutes 2:20-9 (Appendix 3)).

One of the important grounds upon which the application of the Petitioner for a writ of certiorari herein is based on Rule 11 of the New Jersey Supreme Court (Appendix 2) and in particular its application to candidates for admission to the bar in New Jersey both prior and subsequent to February 14, 1931.

Petitioner since attainment of his majority and at all times during which he resided in New Jersey has been a voting resident of that State. He voted and still votes in Jersey City, County of Hudson, State of New Jersey. Since he has complied with all the New Jersey Supreme Court rules for admission as an Attorney, even having submitted to examination, for a license only as an Attorney, although he is a Counsellor at Law of the New York

Bar, he is of the firm opinion that he is being unjustly denied the privileges and immunities accorded to citizens of New Jersey. Petitioner as this record shows and in accordance with Rule 11 of the Supreme Court, "matriculated in an approved law school" on September 16, 1925 and graduated therefrom on June 12, 1928 (R. 23). He certainly comes within the New Jersey rules in existence prior to February 14, 1931 as referred to in Rule 11 (*supra*).

Aside from studying the New Jersey law and practicing *pro hac vice* in its Courts in *Wall* v. *Jersey City Board of Education* (119 N. J. L. 308, 196 Atl. 663) and other cases, Petitioner for over four years has made an exhaustive research of New Jersey School Law and on several occasions has been consulted as an authority on the subject by New Jersey Counsellors, Attorneys and Officials of that State. Again for reasons unknown to Petitioner upon the argument before the Supreme Court on October 4, 1939, the Court did not seem to grasp the matter. It overlooked the *Natelson* decision. It failed to consider its Rule 11 in regard to Petitioner. It characterized the Petitioner, who has over eleven years' practice as a Counsellor at Law, as a "law student".

Regarding the admission of New Jersey Counsellors to the New York Bar, Paragraph 1 Rule II of the New York Court of Appeals Rules (Appendix 4) permits the admission of New Jersey Counsellors in New York on motion without examination after five years practice in the highest court of the State of New Jersey. Of course there is no reciprosity concerning the admission of Attorneys in New Jersey. Nor does Petitioner claim there is any comity in this regard. However, of the forty-eight states in the Union and including the District of Columbia, Counsel from foreign states with certain qualifications

may be admitted in about forty states and in the District on motion and without examination. Of the eight remaining states about four require special examinations which may be waived. New Jersey is one of the four remaining States insisting upon examination of duly qualified Counsellors or Attorneys from foreign States before admission ("Rules for Admission to the Bar", West Publishing Company (1939); Martindale-Hubbell Law Digest (1940). Petitioner states that the New Jersey requirements in this regard are most unreasonable and that some Uniform Law regarding admission of attorneys in foreign states should be enacted.

On June 28, 1940 Petitioner advised the Chief Clerk of the New Jersey Supreme Court, who is also Secretary to the Respondent Board, that Petitioner intended to apply to the United States Supreme Court for a writ of certiorari in these proceedings and Petitioner accordingly at that time requested a certified copy of the entire record.

It is interesting to note that on July 5, 1940 the New Jersey Supreme Court abrogated Rule 11. Could this act by the New Jersey Supreme Court be construed as an admission that it recognizes and concedes the unconstitutionality of Rule 11 in so far as its applicability to foreign attorneys is concerned, and in particular in regard to your Petitioner?

After the New Jersey Court of Errors and Appeals refused to take jurisdiction in this cause, Petitioner could have no further recourse but to this United States Supreme Court. It is of interest to note that one of the Judges of the New Jersey Court of Errors and Appeals (R. 63) is a young man who is but recently out of Law School. Upon the entire record and the other facts and circumstances surrounding this cause, the result is conclusive that the treatment being accorded this Petitioner, as a member of the New York Bar and of the Bar of this

Supreme Court, as well as New York Counsellors in general, calls for a thorough investigation as well as judicial relief.

Because of lack of funds, Petitioner has been hampered in perfecting this appeal. However, on July 21, 1940, your Petitioner was ordered to Active Duty with the United States Army until August 17, 1940, on which date the War Department further ordered Petitioner to Extended Active Duty for an indefinite period. The result is that Petitioner has been accordingly unable to give the full time and attention he would normally give to the preparation of this Petition and Brief thereon.

Specification of Points to Be Urged.

The petitioner contends:

(1) That under Rule 11 of the New Jersey Supreme Court Rules adopted February 14, 1931, he, having "matriculated in an approved Law School" prior to that date, is not required to serve a clerkship under Rule 6(c) (Appendix 1) (decided in *In re Natelson*, 3 N. J. Misc. 549, 129 Atl. 183) which as amended is now in effect Rule 9(a) (Appendix 2); and also that he is entitled to the benefit of Rule 3 (in effect from 1905 to 1931 (Appendix 1)) which merely provides that a candidate for admission to the New Jersey Bar "shall first submit himself to an examination as hereinafter provided, and thereupon give satisfactory evidence of his learning in the law, and his knowledge of the practice thereof as established in this State". In the same breath however Petitioner emphatically and without equivocation insists he passed his said bar examination.

(2) That the last clause in Rule 11 (*supra*), is unconstitutional in that it illegally discriminates against attor-

neys from foreign states, providing for a different set of rules governing such foreign attorneys.

(3) That the decisions of the Respondent Board and of the New Jersey Supreme Court and Court of Errors and Appeals are arbitrary, despotic and not guided, exercised or regulated by a sound and just judicial discretion but are based upon unsound premises and invalid reasoning.

(4) That he has been deprived of his certain property right in said examination, denied the enjoyment of the privileges and immunities accorded to the citizens of the several States without due process of law and has been denied the equal protection of laws.

(5) That under the anomalous system of admission of attorneys to the New Jersey Bar the power of the New Jersey Supreme Court is solely recommendatory, the final decision resting with the Governor of that State; accordingly Petitioner's examination papers should have been reviewed by the highest Court. (*Randall* v. *Brigham*, 7 Wall. (74 U. S.) 523, 541; *Ex Parte Bradley*, 7 Wall. (74 U. S.) 364, 379; *In re Cooper*, 22 N. Y. 67).

Summary of the Argument.

The argument for the Petitioner may be summarized as follows:

1. Under the anomalous system of admission of Attorneys in New Jersey, the power of the New Jersey Supreme Court in this regard is but recommendatory, the Governor having the sole power to license attorneys in that State; accordingly, the order of the Supreme Court was appealable to the highest Court of the State of New Jersey.

a. Ordinarily in most jurisdictions the power to admit attorneys is vested in the Courts. New Jersey does not follow this practice.

b. Since the New Jersey Supreme Court acts judicially regarding the qualifications of a candidate for admission to the bar, an order denying the right to admission is appealable to the highest court in the state.

2. Rule 11 of the New Jersey Supreme Court Rules, insofar as it concerns the Petitioner has a twofold aspect: its lack of application to Petitioner with regard to granting him protection under the Rules existing prior to 1931, denies him the equal protection of laws; its last clause application to Petitioner unjustly discriminates against him as an attorney from a foreign state, and in this respect the Rule is unconstitutional.

a. Petitioner contends he comes within the protection of said Rule 11 (Appendix 2); petitioner should not be required to serve a clerkship in New Jersey.

b. The last clause of Rule 11 (*supra*) is highly discriminatory to Petitioner as well as all attorneys from foreign states.

3. The decisions of the Respondent Board, New Jersey Supreme Court and Court of Errors and Appeals have resulted in the Petitioner being denied under the Federal constitution his right to enjoy the privileges and immunities accorded to the citizens of the several states; he has been deprived of his certain property rights without due process of law; and he has been denied the equal protection of laws within the jurisdiction of New Jersey.

4. The power of a Court or Board of Examiners is not arbitrary and despotic; nor can the New Jersey Supreme Court make an unreasonable rule which imposes an unreasonable restraint and burden on Petitioner.

5. Petitioner has not been accorded the benefit of sound law or valid reasoning.

Argument.

I.

Under the anomalous system of admission of attorneys in New Jersey, the power of the New Jersey Supreme Court in this regard is but recommendatory, the Governor having the sole power to license attorneys in that state; accordingly, the order of the Supreme Court was appealable to the highest court in the State of New Jersey.

(a) Ordinarily in most jurisdictions the power to admit attorneys is vested in the courts. New Jersey does not follow this practice.

In that State it is uncontradicted that attorneys-at-law are not appointed, licensed or admitted to practice by the Supreme Court or by any branch of the Judicial Department of the State. They are invested with that privilege by letters-patent, issued under the Great Seal of the State by its Governor when he is assured that such licensees are possessed of the proper qualifications by a recommendation to that effect by the Supreme Court.

An interesting treatise on this subject is found in the original New Jersey Report but not the Atlantic report in *In re Branch* (1904), 41 Vr. 537, 576 (cited by the New Jersey Supreme Court and annexed to its rules (Appendix 1)), 70 N. J. Law 537, 576, 57 Atl. 431.

In that case, at page 568 (57 Atl. 435), Justice Garrison stated the following language:

> "But it is not a fact that the Supreme Court of New Jersey licenses attorneys at law or admits them to practice, and if this function has ever been exer-

cised by it, either in State or colony, I have been unable to discover the least trace of it, either as an inherited prerogative or as a statutory authorization."

At pages 570 and 435, respectively:

"The matter need not however be further pursued as it is enough for present purposes to say, what no one can contravert, that attorneys at law in New Jersey are not appointed, licensed or admitted to practice by the Supreme Court or by any branch of the Judicial Department of the State. They are invested with that privilege by letters-patent, issued under the great seal of the state by its chief executive, in language that is of itself a complete refutation of the assumption upon which the petitioners' argument is founded, viz.: 'I (the executive), being well assured of the knowledge, learning and ability of , have thought fit to constitute and appoint and by these presents do constitute and appoint him, the said , an attorney-at-law and solicitor in Chancery, hereby authorizing him to appear in all the courts of record within the said State of New Jersey and there to practice as an attorney and solicitor in Chancery according to the laws and customs of said state, for and during his good behavior in the said practice, hereby authorizing and empowering him, the said , to have and demand, take and receive such fees as are or may be by law established in the said state for any service or services which he shall or may do as attorney-at-law or solicitor in Chancery in the said state. And all judges, justices and others concerned are hereby required to admit him accordingly.'" * * *

At pages 571 and 436:

"Similarly, the examination and recommendation by the Supreme Court upon which such action is based

have no legislative antecedents, ancient or modern. The custom is *sui generis*. It originated as customs do, and has grown as customs grow, and is, both historically and constitutionally, susceptible of consideration quite apart from the question of the power of the legislature to provide some other mode of appointment, a question with which we are not now directly concerned."

At pages 575, 576 and 437:

> * * *"Such well-defined power existed, as we have seen, in the Supreme Court to examine those whom it recommended for executive license, and this power, in its relation to such recommendation and mode of appointment, is therefore, in my judgment, not subject to derogation at the legislative will."

Concerning this peculiar system of admission of Attorneys, Vice Chancellor Stevenson correctly stated *In re Raisch*, 83 N. J. Eq. 82, 86, 90 Atl. 12, 14:

> "So far as I am aware, this anomaly is not found in any other State in the Union * * *".
>
> 7 C. J. S. page 711, n. 61.

(b) SINCE THE NEW JERSEY SUPREME COURT ACTS JUDICIALLY REGARDING THE QUALIFICATIONS OF A CANDIDATE FOR ADMISSION TO THE BAR, AN ORDER DENYING THE RIGHT TO ADMISSION IS APPEALABLE TO THE HIGHEST COURT IN THE STATE.

A leading authority that an order denying the right of admission to the bar is a judicial function which is appealable to the highest court, and further that every qualified applicant has a substantial constitutional right to admission is *In re Cooper*, 22 N. Y. 67, where the New York Court of Appeals in an excellent treatment of all

the phases of the history of admission of attorneys, including that presently existent in the State of New Jersey, and in language so apropos as to warrant repetition here, states (pp. 86 *et seq.*) the following:

> "In regard to attorneys the Constitution confers the absolute right of admission upon every one possessing the requisite qualifications. The court is called upon to determine the existence of this right. It being ascertained that the applicant possesses the requisite qualifications, his admission follows as a legal necessity. It is certainly clear as a general rule that whenever the law confers a right and authorizes an application to a court of justice to enforce that right, the proceedings upon such an application are to be regarded as of a judicial nature; * * *
>
> It becomes our duty, therefore, to review the order of the Supreme Court denying the right of the appellant to admission as an attorney. * * *
>
> In this state it seems that all attorneys prior to the Revolution were appointed by the Governor of the Colony (*People* v. *The Justices of Delaware*, 1 John. Ca. 182). By the Constitution of 1777 the power of appointing this class of officers was vested directly in the courts, but the Constitution of 1822 was silent upon the subject, thus leaving the matter in the direction and control of the legislature which in its next session passed an Act requiring attorneys to be licensed by the courts. * * *"

Aside from New Jersey possibly being the only state that has in vogue such a peculiar system regarding the admission of attorneys it suffices to say that the modern cry, "Ichabod, the glory is departed from Israel". (I. Samuel iv. 21) as applied to the standards of admission to the bar in many jurisdictions, has borne fruit in nam-

ing among other standards set, of approved law schools by the Council of the American Bar Association. Why not, therefore, a uniform system of admission of attorneys from Foreign states?

At the risk of prolixity, but in the interest of clarity, the following language in 66 A. L. R., 1514, is set forth:

> "The New Jersey Constitution of 1844 provides that the Supreme Court 'shall continue with the like powers and jurisdiction' as belonged to it prior to the adoption thereof. An examination of the Constitution, statutes and rules of the courts from the earliest times shows that it has never been the custom of the Supreme Court to license attorneys, but that there has been a custom since, long prior to the adoption of the Constitution of 1844 by which the Chief Executive of the State, on the recommendation of the Supreme Court, based on examination, invests applicants with the privilege of practicing law with letters patent issued under the Great Seal of the State. Inasmuch as it has always been the unchallenged function of the Supreme Court of the state to license attorneys on the recommendation of the Supreme Court, the power to determine the fitness and to recommend applicants is one of the powers which existed in that court at the time of the adoption of the Constitution and which by the terms of the constitution 'shall continue' in the Supreme Court.
>
> This power to qualify and recommend applicants being in the Supreme Court, the legislature can enact no law in derogation thereof and therefore, a statute requiring the Supreme Court to recommend certain persons without an examination is invalid. *In re Branch*" (*supra.*)

An examination of the New Jersey law discloses that even in view of the above, the New Jersey Supreme Court, irrespective of its powers, assumed, acquired, or appropriated by custom, at one time, in deviation thereof, recognized the power of the New Jersey legislature to make a law that attorneys and counsellors from foreign states should be admitted in that state without examination (New Jersey Public Laws 1894, p. 161). But these provisions were later repealed (Public Laws 1895, p. 359).

While the actual admission to practice is of itself a judicial function, nevertheless the New Jersey Supreme Court does not exercise this judicial power of admission as such. It has power only to investigate and make recommendations. A body possessing the power to investigate and make recommendations cannot for a moment be conceded the power of final control which would enable it to do indirectly that which it is forbidden to accomplish directly. The action of the Supreme Court, therefore, should be reviewable by higher authority.

The New Jersey Court of Errors and Appeals is the court of last resort in all causes in that state (New Jersey Constitution, Sec. 1, Art. VI (Appendix 3)). That Court has heretofore entertained appeals in matters relating to the rights of attorneys to practice.

In re Hahn, 85 N. J. Eq. 510, 96 Atl. 589;
In re Cosey, 85 N. J. Eq. 599, 96 Atl. 595.

II.

Rule 11 of the New Jersey Supreme Court Rules, in so far as it concerns the Petitioner, has a twofold aspect; its lack of application to Petitioner with regard to granting him protection under the rules existing prior to 1931, denies him the equal protection of laws; its last clause application to Petitioner unjustly discriminates against him as an attorney from a foreign state, and in this respect the rule is unconstitutional.

(a) Petitioner contends he comes within the protection of said Rule 11 (Appendix 2); Petitioner should not be required to serve a clerkship in New Jersey.

Petitioner contends he comes within the protection of said Rule 11 (Appendix 2) and should be given the benefits of the New Jersey Supreme Court rules in existence prior to February 14, 1931, and in particular should be entitled to the protective provisions of Rule 3 (Appendix 1) inasmuch as Petitioner "matriculated in an approved law school" on September 16, 1925, graduating therefrom on June 12, 1928, long prior to the promulgation of Rule 11 in 1931 (R. 23). Accordingly, therefore, Petitioner is not required to serve any clerkship in the State of New Jersey, especially under Rule 6 (c) (Appendix 1), as was decided in *In re Natelson*, 3 N. J. Misc. 549, 129 Atl. 183, which Rule (6 (c)) is now in effect Rule 9 (a) (Appendix 2). This matter, as far as the *Natelson* decision goes, is *stare decisis*.

The *Natelson* case (*supra*) is on all fours with that concerning the Petitioner's. The New Jersey Supreme Court held in that case that Rule 6 (c) (Appendix 1) did not apply to an Attorney from another state who

sought reexamination without filing a certificate of clerkship when such Attorney practiced in another jurisdiction (New York) at least ten years.

The *Natelson* case was further cited with approval by the Supreme Court in *In re Meigs*, 9 N. J. Misc. 234, 153 Atl. 102, where the court stated, at page 235:

> "The Natelson decision relates only to such applicants as have a record of ten years or more practice in another state."

Likewise, by the same token, Petitioner contends he comes within the protective provisions of Rule 3 (Appendix 1), which merely provides that a candidate for admission to the New Jersey bar "shall first submit himself to an examination as hereinafter provided, and thereupon give satisfactory evidence of his learning in the law, and his knowledge of the practice thereof as established in this state". In the same breath however, Petitioner emphatically insists he "passed" his said bar examination.

Can it be logically and correctly stated that Petitioner has not complied with the requirements of this rule? (Reference is made herewith to Point IV (Appendix 5).) Even a cursory examination of his answers to the bar examination questions will show that he has fulfilled the requirements of the rule in every respect. His knowledge, learning and ability have trained him for so doing. His eleven years' practice as a Counsellor has "schooled" him in the law. Aside from studying the New Jersey law in general, familiarizing himself with its various statutes, decisions and practice, forms of pleading, etc., he is not without experience in practice before its Courts. He has practiced both before its Supreme Court and its Court of Errors and Appeals, *pro hac vice*. (*Wall* v. *Jersey*

City Board of Education, 119 N. J. L. 308, 196 Atl. 663.) He has conducted several other cases in the State of New Jersey. Petitioner has made a research of New Jersey School Law for over four years and has on numerous occasions been consulted as an authority on same by New Jersey Counsellors at Law, Attorneys and Officials of that State.

The statement of the Chairman of the Respondent Board, as well as that of one of the New Jersey Supreme Court Justices after the motion for reargument, to the effect that Petitioner had "an excellent paper on his examination" (R. 2, 3) seem to preclude the Respondent from further urging that the Petitioner has not met the New Jersey requirements for admission.

The Petitioner's remedy is established by precedent. *In re Kraft*, N. J. Law Journal 1917, p. 164 (Appendix 3).

(b) THE LAST CLAUSE OF RULE 11, ADDED BY THE SUPREME COURT IN OCTOBER 1931, IS HIGHLY DISCRIMINATORY TO THE PETITIONER AS WELL AS TO ALL ATTORNEYS FROM FOREIGN STATES, AND, CONCLUSIVELY SO, IN THAT IT SETS UP A DIFFERENT SET OF RULES REGARDING THEM AS IS APPLIED TO NATIVE NEW JERSEY CANDIDATES FOR ADMISSION TO THE BAR.

The direct application of this portion of Rule 11 to the Petitioner resulted in denying him the privileges and immunities guaranteed to citizens in the several states under Sec. 2, par. 1 of Art. IV, and Sec. 1 of Amendment XIV of the United States Constitution, and deprives him of his certain property right without due process of law, and also denies him the equal protection of laws within the jurisdiction of New Jersey, as provided for in the last mentioned Amendment. These provisions of the Federal Constitution are discussed in Argument III herein. (Also

in this connection reference is made to Point II (Appendix 5).)

Rule 11 is repugnant to the Federal and New Jersey Constitutions and void. (Sect. 34, Chap. 147, N. J. P. L. 1900, N. J. R. S. 2:27-149.1.)

III.

The decisions of the Respondent Board, New Jersey Supreme Court and Court of Errors and Appeals have resulted in the Petitioner being denied under the Federal Constitution his right to enjoy the privileges and immunities accorded to the citizens of the several states; he has been deprived of his certain property rights without due process of law; and he has been denied the equal protection of laws within the jurisdiction of New Jersey.

(a) PETITIONER IS ENTITLED TO ENJOY THE PRIVILEGES AND IMMUNITIES ACCORDED TO THE CITIZENS OF THE SEVERAL STATES.

All the authorities and decisions dealing with the above statements are in accord.

The right to engage freely in a lawful occupation is protected by the New Jersey Constitution (Sec. 1, Art. I, Bill of Rights (Appendix 3)). Likewise, the right to the pursuit of happiness is preserved in that state. *Brennan* v. *United Hatters* (Court of Errors and Appeals), 73 N. J. L. 729, 65 Atl. 165.

In *Cummings* v. *State of Missouri*, 4 Wall. (71 U. S.) 277, 320, Justice Field, in delivering the opinion of the court, says:

> "The learned counsel does not use these terms—life, liberty and property—as comprehending every

right known to law. He does not include under property those estates which one may acquire in professions, though they are often the source of the highest emoluments and honors."

Dent v. *West Virginia*, 129 U. S. 114.

In *Ex Parte Garland*, 4 Wall. (71 U. S.) 333, 379, the same justice, speaking of the office of an attorney, stated:

> "It is a right of which he can only be deprived by the judgment of the court, for moral or professional delinquency."

In *Burns Baking Co.* v. *Bryan*, 264 U. S. 504, 506, 507, it has been held that the Constitution is violated when persons engaged in the same business or profession are subjected to different restrictions.

Any classification, to have the virtue of constitutional generality, must rest upon distinctions that are substantial and not merely illusory. *Raymond* v. *Teaneck Township*, 118 N. J. L. 109, 111, 191 Atl. 480.

If a statute or rule granting an exemption has the effect of conferring on certain persons privileges or immunities not granted to other persons similarly situated, it is unconstitutional. *In re Branch*, 41 Vr. 535, 576, 41 N. J. L. 535, 576, 57 Atl. 431. (Appendix 1, footnote.)

The pursuit of any legitimate occupation is recognized under our government. Such a right is a natural, essential and inalienable right, and is protected by the Federal and various state constitutions * * * and included in the constitutional guarantees of due process of law.

16 C. J. S., pp. 625 *et seq.*, Secs. 212, 224.

For the New Jersey Supreme Court to require Petitioner to serve a four months' clerkship and give up the

practice of his profession in the State of New York, from which he derives his income, would have the effect of reducing such applicant foreign attorneys to the class of the wealthy.

The provisions of the Fourteenth Amendment to the Federal Constitution declaring that no state shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States, etc. * * * and prohibiting the enactment of laws granting any special or exclusive privileges, immunities or franchises * * * render void all State statutes (or rules) which make any unreasonable or arbitrary discrimination between different persons or classes of persons. 16 C. J. S., p. 954, Sec. 489; *In re Chicago, R. I. & P. Ry. Co.*, 90 Fed. (2d) 312, 113 A. L. R. 487; *Raymond* v. *Teaneck Township* (*supra*); *Phelps* v. *Board of Education*, 115 N. J. L. 310, 180 Atl. 220, 300 U. S. 319.

This distinction extends to and includes citizens of other states as well as non-residents. 16 C. J. S., pp. 988, 989, Secs. 502, 503; *Blake* v. *McClung*, 172 U. S. 239.

In New Jersey it has been held that the right to practice law is a property right which is protected. *Unger* v. *Landlord's Management Corp.*, 114 N. J. Eq. 68, 69, 70, 168 Atl. 229. The right to practice law is earned by hard study and good conduct. *Bradwell* v. *Illinois*, 16 Wall. (83 U. S.) 130; 6 C. J., p. 569, N. 36; *Matter of Co-Operative Law Co.*, 198 N. Y. 479, 483, 92 N. E. 15; *In re O'Brien's Petition*, 79 Conn. 46, 63 Atl. 777; *State ex rel. Shackleford*, 241 Mo. 592, 145 S. W. 1139.

In connection with the last clause in Rule 11 (Appendix 2), Petitioner makes the following comment. For the New Jersey Supreme Court to enact a rule forbidding a

man the enjoyment of his own house without the consent of an arbitrary Board of Examiners is no more unjust than to provide that a man with proper qualifications shall not enjoy the benefits of an established practice without a like consent. In either case he is deprived of his vested rights and property by a process rather ministerial than judicial and wholly different than that which is meant by due process of law, the judgment of his peers or the law of the land. His land cannot be taken away from him except by intervention of an impartial jury of his countrymen; his hard-earned reputation and professional practice should not be less secure.

Speaking of Sec. 1, Amendment XIV, of the Federal Constitution, this Supreme Court in the *Slaughterhouse Cases*, 16 Wall. (83 U. S.) 36, 77, declared:

> "Its sole purpose was to declare to the several states that whatever those rights, as you grant or establish them to your own citizens, or as you limit or qualify, or impose restrictions on their exercise, the same, neither more nor less, shall be the measure of the rights of citizens of other states within your jurisdiction."

(b) PETITIONER HAS BEEN DEPRIVED OF HIS CERTAIN PROPERTY RIGHTS WITHOUT DUE PROCESS OF LAW.

Deprivation of property without due process of law includes the property of pursuing a law profession and the right to earn a living by the practice of law. 16 C. J. S., pp. 1195, 1197, sec. 599; *Lynch* v. *United States*, 292 U. S. 571; *Cameron* v. *International Alliance*, 118 N. J. Eq. 11, 176 Atl. 692; 97 A. L. R. 594. Unlawful and unusual restrictions on lawful occupations and interfering with private business are prohibited. *Lawton* v. *Steel*, 152 U. S. 133, 137; *Smith* v. *State of Texas*, 233 U. S. 630;

Meyer v. *Nebraska*, 632 U. S. 390, 399; *Burns Baking Co.* v. *Bryan*, 264 U. S. 504, 514.

The decisions of the New Jersey tribunals regarding Petitioner have resulted in depriving him of his property rights without due process of law in that petitioner never received his examination rating. Accordingly, therefore, he had no opportunity to defend an erroneous grading. It would appear that the action of all said tribunals is arbitrary, despotic and not based upon sound premises and valid reasoning. Therefore it is condemnable, especially after taking into consideration Petitioner's eleven years active practice as a Counsellor in the State of New York.

In *Bank of Columbia* v. *Okely*, 4 Wheat. (17 U. S.) 235, 244, this court held that the principle of due process, fundamental in social compact and also made the subject of express constitutional precept, secures the individual from the arbitrary exercise of the power of government, unrestrained by the established principles of private rights and distributive justice.

(c) Petitioner has been denied the equal protection of laws within the jurisdiction of New Jersey.

It is well settled by the repeated decisions of this Court that the equal protection of the laws guaranteed by the Federal Constitution and the Bill of Rights of some states is the treatment alike, in the same place and under like circumstances and conditions, of all persons subjected to state legislation. This clause is a pledge of the equal protection of laws or the protection of equal laws. 16 C. J. S., p. 988, sec. 502; *Truax* v. *Corrigan*, 257 U. S. 312; *Yick Wo* v. *Hopkins*, 118 U. S. 356. In *Burns Baking Co.* v. *Bryan*, 264 U. S. 506, 507, it has been held that the Constitution is violated when persons in the same class

or business are subjected to different restrictions and hence deprived of the equal protection of laws. In *In re Van Horn*, 74 N. J. Eq. 600, 601, 602, 70 Atl. 986, it was held that those similarly situated should not be subjected to anything arbitrary and capricious in violation of the Constitution of the State of New Jersey.

IV.

The power of a court or Board of Examiners is not arbitrary and despotic; nor can the New Jersey Supreme Court make any unreasonable rule which imposes an unreasonable restraint and burden on Petitioner.

In *Ex parte Secombe*, 19 How. (U. S.) 9, 13 Chief Justice Taney said:

> "And it has been well settled, by the rules and practice of common-law courts, that it rests exclusively with the court to determine who is qualified to become one of its officers, as an attorney and counsellor, and for what cause he ought to be removed. *The power, however, is not an arbitrary and despotic one, to be exercised at the pleasure of the court * * *; but it is the duty of the court to exercise and regulate it by a sound and just judicial discretion*, whereby the rights and independence of the bar may be as scrupulously guarded and maintained by the court, as the rights and dignity of the court itself." (Italics ours.)

Only reasonable restrictions can be imposed on the practice of law, especially where one has met the prescribed test. *Brydonjack* v. *State Bar*, 208 Cal. 439, 281 P. 1018; Opinion of Justices, 279 Mass. 607, 180 N. E. 725, 81 A. L. R. 1059; 16 C. J. S. 930.

The power of courts to make such rules as they deem necessary is subject to limitation that such rules must not contravene a statute or organic law. The Court cannot adopt a different rule (viz. Rule 11 (Appendix 2)) and apply it retroactively to the prejudice of counsel or any party subject to its jurisdiction. Rules of the Court must be considered as operating prospectively only and any rule applying to past transactions, which takes away rights to which before the adoption of the rule a person was entitled, must be regarded as void.

7 R. C. L. 1024, 1027;
41 A. S. R. 643.

Courts may make only reasonable rules and regulations for admission to the bar. *In re Cate*, 273 P. 617, Supplementing Opinions in 270 P. 968 and 271 P. 356. *In re McDonald*, 200 Ind. 424, 164 N. W. 261; *In re Raisch*, 83 N. J. Eq. 82, 90 Atl. 12.

A rule must not be arbitrary and unreasonably interfere with the rights of individuals. *In re Anderson*, 69 Neb. 686, 96 N. W. 149; *Lawton* v. *Steel*, 152 U. S. 133; *Conn. Co.* v. *Stamford*, 95 Conn. 66, 110 Atl. 453; *Price* v. *Illinois*, 238 U. S. 446; *Watchung Lake Inc.* v. *Mobus*, 119 N. J. L. 272, 196 Atl. 223; *In re Egan*, 24 S. D. 301, 123 N. W. 478.

While powers of a Board of Bar Examiners are merely recommendatory, a court will not exercise its power in contravention to an adverse recommendation of the Board, unless a convincing showing is made not based upon sound premises and valid reasoning. *Spears* v. *State Bar*, 211 Cal. 183, 249 P. 697; 28 A. L. R. 1146; *Salot* v. *State Bar*, 45 P. (2d) 203. Or unless the case is outside discretion, is irregular, or against law or of flagrant injustice. *Ex parte Bradley*, 7 Wall. (U. S.) 379; *Ex parte Crane*, 5

Peters (U. S.) 190; *Ex parte Burr* (*supra*). Nor is the Court's power arbitrary, or to be exercised at the pleasure of the Court, or from passion, prejudice or personal hostility, but it is the duty of the Court to exercise and regulate its power by a sound and just judicial discretion. *In re Crumb*, 103 Or. 296, 204 P. 948; *In re Hosford*, 62 S. D. 374, 252 N. W. 843; 6 C. J. 572, n. 62; *In re Bowers*, 137 Tenn. 193, 194 S. W. 1093; *Rosenthal* v. *State Bar*, 116 Conn. 407, 165 Atl. 211; 87 A. L. R. 991; *Matter of Backus*, 136 N. Y. S. 484. Where a Board of Examiners renders a decision not based on sound premises, it will be reversed. 28 A. L. R. 1140; 72 A. L. R. 928.

In *Dent* v. *West Virginia*, 129 U. S. 114, this Court held that a State could exact only reasonable tests as to qualifications of applicants to engage in a public calling.

A law prescribing conditions for engaging in a particular business or profession is void where it arbitrarily and unreasonably discriminates between persons similarly situated or in favor of residents as against non-residents. 16 C. J. S., p. 930, sec. 468; *Ex parte Deeds*, 75 Ark. 542, 87 S. W. 1030; *Ideal T. Co.* v. *Salem*, 77 Or. 182, 150 P. 852.

In all, it would appear that the decisions of the New Jersey tribunals, regarding Petitioner, were more of expediency than of law.

V.

Petitioner has not been accorded the benefit of sound law or valid reasoning.

As appears from the "Rules for Admission to the Bar in the Several States", West Publishing Co., 1939 (copies of which are filed herewith), which is recognized as an authority in *In re Bergeron*, 220 Mass. 472, 107 N. E. 1007,

only approximately four States of the Union require examination before the admission of foreign Attorneys. Since Petitioner is a Counsellor of eleven years' standing in New York, why was he not permitted to take the New Jersey Counsellor's examination instead of the examination only as Attorney? Is an element of proportion missing?

The State in which Petitioner is admitted, grants admission to New Jersey Counsellors after but five years' experience in New Jersey (New York Court of Appeals, Rule II (Appendix 4)). Why not reciprocity in New Jersey, in which State in 1939 a Bill was drawn to admit original Washington, D. C., Counsel on motion? Why, because of expediency—New Jersey Counsel could not qualify under the District's reciprocal rules.

In other important States in the Union, such as Connecticut, Michigan, Tennessee, Pennsylvania, Alabama, Kentucky and Massachusetts, *et al.*, qualified foreign attorneys are admitted on motion and without examination.

If the only fear is that Petitioner, upon admission, might not maintain an office in New Jersey, this is easily remedied. Petitioner asserts that as an officer of the Court he has presented satisfactory evidence (his creditable examination papers) of sufficient legal learning and knowledge of practice in New Jersey and therefore is entitled to be admitted in that State. *Ex parte Robinson*, 19 Wall. (86 U. S.) 505, 512 (Points II and IV (Appendix 5)). He has more than substantially complied with the New Jersey requirements; but discrimination predominates. The New Jersey Supreme Court refused to follow *In re Natelson* (*supra*), and upon notice of this within application for a writ, abrogated Rule 11.

Petitioner believes he is of sufficient knowledge, learning an ability to practice in New Jersey and again sub-

mits his answers on examination sustain this assertion. Petitioner's fate is in the hands of this Court. He rests.

CONCLUSION.

It is respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers to the end that basic rights under the Constitution of the United States must be preserved. Accordingly I ask that a writ of certiorari should be granted, and that this Court should review and reverse the decisions of the New Jersey courts and, if necessary, remand the matter to the appropriate New Jersey Court for further proceedings not inconsistent with the opinion of this United States Supreme Court.

Respectfully submitted,

WILLIAM G. WALL,
Attorney in pro. per.,
A member of the Bar of the United States Supreme Court.

New York, N. Y., August 22, 1940.

APPENDIX 1.

Rules of New Jersey Supreme Court (Edition 1929).

II. Of Attorneys and Counsellors.

2. No person within the age of twenty-one years, or who is not a citizen of the United States, shall be recommended to the governor for license to practice as an attorney-at-law in this State. (Rule 1, 1905, modified.)

3. No person shall be recommended for license as an attorney unless he shall first submit himself to an examination as hereinafter provided, and thereupon give satisfactory evidence of his learning in the law, and his knowledge of the practice thereof as established in this State. (Rule 2, 1905.)

4. No person shall be admitted to examination for license as an attorney unless he first produce to the Board of Bar Examiners, in the manner prescribed by its rules, satisfactory evidence:

(a) Of good moral character;

(b) That two months prior to taking his bar examination he posted in the office of the Clerk of the Circuit Court of the county in which he served his clerkship, or in which he resides, a notice of his intention to apply for admission to the bar;

(Note.—This notice must be given for the time at which the examination is actually taken, and for every examination that is taken. If an applicant does not take the examination at the time mentioned in the notice, or if, having failed, he takes the examination more than once, he must post a new notice.)

(c) That he has served a regular clerkship in this State with some practicing attorney-at-law of this court, who is also a counsellor-at-law, for three years. Any portion of such time, not exceeding twenty-four months in all, spent before or after the beginning of the clerkship in regular attendance upon the law lectures in some law school, of established reputation, in the United States, or in the study of the English law at an institution of established reputation in a country where English is the common language of the people, shall be allowed in lieu of an equal period of such latter clerkship. The service of such clerkship in every case shall be evidenced by a certificate from the person or persons with whom such clerkship shall be served, or other satisfactory evidence, that the applicant has not, at any time during said clerkship, been engaged in, or pursued, any business, occupation or employment incompatible with the full, fair and bona fide service of his clerkship. If he has served in any department of the military or naval service of the United States during the late war with Germany, two years' clerkship shall be deemed sufficient; and any portion of time, not exceeding sixteen months, spent at law school, or in the study of English law as hereinbefore provided, shall be allowed in lieu of an equal period of such clerkship. (Amended June 5, 1918, and further amended June 5, 1923.)

(Note.—The clerkship must be served in an office within the State of New Jersey. If the three-year period of clerkship expires after the bar examinations are held, but within four weeks thereafter, the applicant may take the examination, but cannot be sworn in until the full period has expired.)

(c-2) The time of study allowed in a law school must be proved by the certificate of the duly authorized

officer of said school, under the seal of the said school, if such there be, in addition to the affidavit of the applicant, which must, also, state the age at which the applicant began his attendance at such law school. Said certificate and affidavit must, also, show that said applicant took the prescribed course of instruction required at said school for the degree of Bachelor of Laws while in attendance thereat. (March 3, 1919, as amended June Term, 1919.)

(Note.—Only the time actually spent in attendance at the law school can be counted.)

(d) That at least three years (or two years when the proviso of paragraph c is applicable) before taking his bar examination he had graduated or had duly passed his final examination for graduation in a college or university, or in a public high school of this State, or in a public high school of another State, or a private school or academy approved by the Board of Bar Examiners, or that he had passed an examination equivalent to that for graduation in a public high school of this State, to be held by officers of the public schools, the times, places and character of which examination shall be determined by the State Board of Education with the concurrence of the Board of Bar Examiners. (Amended June 5, 1918.)

(e) That at the commencement of the clerkship above required, he filed in the office of the Clerk of the Supreme Court the certificate of the counsellor with whom he is to serve, that such clerkship has begun. No clerkship shall be deemed to have commenced until such certificate shall have been filed as aforesaid; and the period of clerkship shall be computed from the actual filing of such certificate and not otherwise. (Rule 3, 1905, as amended June 5, 1923.)

5.(a) No attorney from another State shall be recommended for license to practice in this State unless he shall first submit himself to the bar examination; nor shall he be admitted to such examination unless the time during which he has served a clerkship with a practicing attorney in this State, or another State who is also a counsellor-at-law and the time during which he has practiced in another State, shall amount to three years in the whole, nor unless he has complied with paragraphs a, b and d of rule 4, except that he may take the examination last mentioned in paragraph d, at any time before taking the bar examinations.

(b) And except further that when such attorney has been actively engaged in the practice of law in such other State for a period of not less than ten years, a compliance with paragraph d of rule 4 shall not be required of him.

(c) Regular attendance upon law lectures in a law school of established reputation for a period not exceeding twenty-four months may stand in lieu of an equal period of clerkship. (Rule 4, 1905, as amended June 5, 1923.)

(d) (Abrogated October, 1927.)

6.(a) No person shall be recommended for license to practice as a counsellor-at-law in this State unless he shall first submit himself to examination and give satisfactory evidence of his knowledge of the principles and doctrines of the law, and of his abilities as a pleader; nor shall any be admitted to such examination until he shall have practiced in this court as an attorney for the space of three years at least; or, if he be an attorney who originally practiced in another State, until the whole period during which he shall have practiced law

as an attorney in this State and in such other State, shall be at least six years, of which period the last year must have been spent in practice in this State. (Rule 6, 1905.)

(b) The examination fees prescribed by P. L. 1926, Chapter 116, being $25.00 for the first examination for attorney's or counsellor's license, and (failing to pass the first) $15.00 for each subsequent examination, shall be paid to the Clerk of the Supreme Court by each applicant, at least forty days before the examination and no applicant's name shall be placed upon the list of those entitled to take the Bar Examinations until his examination fee is paid. (February, 1919, as amended May, 1926, and February, 1929, and December, 1929.)

(c) When applicant for attorney has taken an examination and failed in same, he must, before he can take another examination, file with the Clerk proof that he has served a full, fair and bona fide clerkship of six hours each day, Saturdays excepted, in the office of an attorney-at-law, who is also a counsellor, during the time intervening since his last prior examination. (December, 1924.)

APPENDIX 2.

Rules of New Jersey Supreme Court.

Relating to Admission of Attorneys and Counselors*
Adopted February 14, 1931

2. The Court shall appoint a Board of Bar Examiners consisting of three counselors to hold office during the pleasure of the Court. Said Board shall conduct the examinations for attorneys and counselors, and subject to the approval of the Court, prescribe rules, forms and procedure relating to admission and disbarment.

3.(a) No person shall be recommended to the Governor for license as an attorney or counselor until after examination as hereinafter provided and compliance with these rules.

3.(b) No person shall be admitted to the examination for attorney unless he shall be at the time of such examination above the age of twenty-one years, a citizen of the United States of America and shall have been a resident of this State for at least six months immediately preceding such examination.

4. No person shall be admitted to the examination for attorney unless he first produces to the Board of Bar Examiners in the manner prescribed by its rules satisfactory evidence:

(a) That he is of good moral character.

(b) That not more than three and not less than two months prior to taking any examination for attorney,

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* For the exclusive power of the Supreme Court to prescribe the examinations upon which persons may be admitted to practice in it, and for a historical review of the subject, see *In re Branch*, 41 Vr. 537, 576.

he filed with the Clerk of this Court a notice of intention to apply for admission to the bar. Said clerk shall, at least forty days prior to the date of the examination, file with the clerks of the Circuit Courts of the counties a list of those in the respective counties applying for admission to the bar, which clerks shall immediately after receipt of said lists, post the same in their respective offices. The clerk of this Court shall also publish twice, once in each week for two consecutive weeks, in a newspaper published in each county, a list of those applying for admission in the respective counties, the first publication to be at least forty days prior to the date of the examination. The Board of Bar Examiners shall prescribe the form of posting and publication under this rule.

(c) That at least three years before taking any examination for attorney he had graduated from or had duly passed his final examination for an academic degree in a college or university approved for this purpose by the State Board of Education, or had successfully completed two full years attendance and study at a college or university approved for this purpose by the State Board of Education.

(d) Whenever approval by the State Board of Education is required under this rule, such approval shall not be effective unless concurred in by the Board of Bar Examiners.

(e) Every applicant, before entering upon his office clerkship, as hereinafter provided, shall procure from said Board of Education, and file in the office of the Clerk of the Supreme Court, a law student's qualifying certificate showing that the requirements of this rule have been complied with.

5(a) All applicants shall be required to serve office clerkships of three calendar years before the date of

an examination taken by such applicants. A portion of such three-year clerkship, not exceeding twenty-four months in all, spent during such three-year period in regular attendance, at an approved law school, shall be allowed in lieu of an equal period of office clerkship, provided the candidate shall have pursued and successfully passed during his period of attendance at said law school, all of the courses required of a candidate for a degree therefrom during such attendance. Under this provision no credit shall be given for less than eight months, or multiples thereof, of law school work successfully completed.

(b) All office clerkships shall be served in an office or offices within this State with a practicing attorney or attorneys of this Court who are also counselors. No more than two clerks shall be registered with any counselor, unless upon application by such counselor to the Board of Bar Examiners, reasonable necessity be shown for additional clerks, in which case said Board of Bar Examiners may authorize the registration of more than two clerks.

(c) The service of such clerkship shall be evidenced by a certificate from the counselor or counselors with whom such clerkship shall have been served, and by further evidence satisfactory to the Board of Bar Examiners if required by them, that the applicant has been in regular daily attendance in the counselor's professional business for at least six hours a day during the usual office hours of the day (Saturdays excepted), and has not at any time during said clerkship been engaged in, or pursued, any business, occupation or employment incompatible with the full, fair and bona fide service of such clerkship.

(d) The time of study allowed in a law school shall be proved by the certificate of the duly authorized officer of said school, in addition to the affidavit of the ap-

plicant which must also state the age at which the applicant began his attendance at such law school. Said certificate and affidavit shall also show that said applicant took and successfully completed as aforesaid the work for the period for which credit is sought, which in no case shall be less than a full school year of not less than eight months.

(e) At the commencement of the office clerkship required by these rules, an applicant shall file in the office of the Clerk of the Supreme Court the certificate of the counselor with whom he is to serve, that such clerkship has begun. No office clerkship shall be deemed to have commenced until such certificate shall have been filed as aforesaid; and the period of office clerkship shall be computed from the actual filing of such certificate and not otherwise.

6. No attorney from another State shall be recommended for license to practice in this State unless he shall have been a resident of this State for at least six months prior to his taking the examination for admission to the bar and unless he shall have taken and passed such examination, nor shall he be admitted to such examination unless he is an attorney in good standing in another State and shall have been entitled to practice in the highest Court of another State for at least five years, nor unless he has complied with the provisions of rule 4 hereof; provided, however, that when such attorney shall have been actively engaged in the practice of law in another State for a period of at least ten years, compliance with the requirements of rule 4 relating to academic qualifications shall not be required.

7. No person shall be recommended for license to practice as a counselor unless he shall have taken and passed the examinations therefor; nor shall any person be admitted to such examination until he shall have

resided in this State and practiced in this Court as an attorney for the space of three years at least.

8. The examination fees prescribed by P. L. 1926, Chapter 116, being $25.00 for the first examination for attorney's or counselor's license, and (failing to pass the first) $15.00 for each subsequent examination, shall be paid to the Clerk of the Supreme Court by each applicant at least forty days before the examination; and no applicant's name shall be placed upon the list of those entitled to take the bar examinations until his examination fee is paid.

9(a) When any applicant, including those applying under rule 6, has taken an examination for attorney and failed in the same, he must, before he can take another examination, file with the Clerk of this Court proof that he has served a clerkship of at least four months during the time intervening since the taking of his last prior examination.

(b) No applicant for an attorney's license who has or shall have failed in four examinations shall be admitted to any examination thereafter.

10(a) The examination for counselor and attorney shall be written and the examination papers shall be so identified that the names of the candidates examined cannot be known to the examiners before they have announced the result of the said examinations.

(b) There shall be two examinations annually for attorneys and counselors, in the months of April and October respectively. The time and places of the examinations shall be fixed by the Board of Bar Examiners, subject to the approval of the Court.

(c) The Board shall report to the Court, with their recommendations, the names of those candidates whose

qualifications accord with these rules, and who shall have passed the examinations successfully.

(d) The Board shall make public the topics and books upon which applicants will be examined, and from time to time shall make public suggestions for the information and guidance of students as the Board may think will tend to promote their studies.

(e) The Court shall appoint, in each county, a committee on character and fitness, to consist of at least three counselors, resident or practicing in said county. It shall be the duty of the said committee to investigate the character and fitness of all candidates for admission as attorney, resident in such county; and no person shall be recommended for license until he shall have received the approval of the said committee. It shall be the duty of the several committees on character and fitness, so far as possible, to keep under observation all applicants who have filed their certificates of commencement of clerkship in the Clerk's office, resident or serving clerkships in their respective counties, from the time of the filing of such certificates down to the time of their admission; and no applicant for admission as an attorney shall be licensed until he shall have filed in the office of the Clerk of this Court the certificate of the committee on character and fitness having such applicant under observation, that he is of good moral character and generally fit and has satisfactorily served the clerkship required by these rules.

11. The foregoing rules, being numbers 2 to 10 inclusive, shall not be deemed to affect the rights of candidates for admission as attorneys who have filed their certificate of commencement of clerkship or have matriculated in an approved law school, prior to the date of promulgation, to wit, February 14, 1931, and such candidates shall be deemed to be under the rules of this Court previously existing, except that these rules where applicable to attorneys of other States, shall take effect Oct. 1, 1931.

(Abrogated July 5, 1940.)

APPENDIX 3.

New Jersey Constitution, Article I (Bill of Rights):

Section 1. "All men are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing and protecting property, and of pursuing and obtaining safety and happiness."

New Jersey Constitution, Article VI:

Section 1. "The judicial power shall be vested in a court of errors and appeals in the last resort in all causes as heretofore;"

New Jersey Revised Statutes (Public Laws 1939, Chap. 140):

Section 2:20-9. "No fee to any attorney, proctor, solicitor or counsel shall be allowed and no allowance by way of such fee shall be made in any cause, matter or proceeding in any court in this state, except for or on account of actual services rendered by a member of the bar of this state engaged in the practice of law and maintaining an office in this state; provided, however, that in any cause, matter or proceeding requiring the services of an attorney, proctor, solicitor, counsel or other member of the bar of any foreign jurisdiction, the court, in allowing a fee or making an allowance by way of fee, as aforesaid, shall take cognizance thereof and shall make allowance therefor as though actually rendered by the member of the bar of this state by whom such services were engaged."

Excerpt from New Jersey Law Journal (1917), p. 164:

For the first time in many years the Supreme Court has reversed the decision of the Examining Board, and certified the papers of a student over the failure marks of the Examiners. The details of the case have not been

made public, except that the successful applicant for admission is known to have been Mr. Bayard R. Kraft, son of Prosecutor William J. Kraft, of Camden, who had failed twice before to pass the test of the Board of Examiners. It would be interesting to know just why the exception was made, but we do not doubt that it was founded upon sound reasons. It is very unlikely, however, that the Supreme Court will often review the discretion of the Examiners hereafter, since, whatever the basis for the finding in this case, if it once becomes understood that such a review may be easily obtained, there will be no end to the applications for review to be made to the Court. It is well known that about half, and sometimes more of the applicants for admission to the Bar in this State fail to succeed at their first examination, and if, in the course of a year, about a hundred or more young men, through their attorneys, apply to the Supreme Court for an examination of the marks against them, it is easy to be seen to what this will lead.

APPENDIX 4.

RULES OF THE NEW YORK COURT OF APPEALS FOR THE ADMISSION OF ATTORNEYS AND COUNSELLORS AT LAW

(adopted February 20, 1929; in effect March 15, 1929).

Rule II: Admission without examination.

The following classes of persons may in the discretion of the Appellate Division be admitted and licensed without examination:

1. Any person admitted to practice and who has practiced five years as a member of the bar in the highest law court in any other state or territory of the American Union or in the District of Columbia.

APPENDIX 5.

(Reprint of Points II and IV as contained in the Brief of William G. Wall, Appellant, filed with the New Jersey Court of Errors and Appeals in support of his appeal, No. 41, February Term, 1940.)

POINT II.

Rule 11 of the Supreme Court Rules, so far as it is applied against the Appellant as an attorney from another state, is unconstitutional.

Rule 11, regarding admission to the Bar of New Jersey (Rules of Supreme Court and of State Board of Bar Examiners, Revised Edition July 1931) is set forth:

> "The foregoing rules, being numbers 2 to 10 inclusive, shall not be deemed to affect the rights of candidates for admission as Attorneys who have filed their certificate of commencement of clerkship or *have matriculated in an approved law school*, prior to the date of promulgation, to wit, February 14, 1931, and such candidates shall be deemed to be under the rules of this Court previously existing, *except that these rules where applicable to attorneys of other states, shall take effect Oct. 1, 1931.*" (Italics ours.)

The appellant argues that since he matriculated in an approved Law school in September 1925 (S. C., p. 23), graduating therefrom in 1928 and was admitted to the New York Bar in 1929, he is not governed by Rules 2-10 (Rules, 1931) and particularly Rule 9(a) thereof, but by the Rules previously existing (Rules, 1929) and that the portion of the aforementioned Rule 11 applying to Attorneys from other States is violative of the Fourteenth Amendment of the Federal Constitution and the Constitution of the State of New Jersey and unconstitutional, because:

1. It denies the Appellant the equal protection of laws guaranteed by the Federal Constitution and Bill of Rights

in that it does not give equal security to or impose an equal burden on everyone similarly situated in a particular class.

In re Van Horne, 74 N. J. Eq. 600, 601, 602;
Truax v. *Corrigan*, 257 U. S. 312, 332, 333;
16 C. J. Sec., page 988.

2. It grants an exemption which has the effect of conferring on certain persons privileges and immunities not granted to other persons similarly situated.

In re Branch, 70 N. J. L. 537, 566;
16 C. J. Sec., page 924;
12 C. J., 1117 n. 63.

3. It makes an unreasonable and arbitrary discrimination between different persons of a particular class and the classification rests on no substantial difference whatsoever.

Raymond v. *Teaneck*, 118 N. J. L. 109, 111;
In re Branch, 70 N. J. L. 537, 566;
Weimer Storage Co. v. *Dill*, 103 N. J. E. 307, 313;
16 C. J. Sec., pp. 954, 955.

4. Its effect, by placing the arbitrary and unreasonable burden on the Appellant as an Attorney from another State of having to serve a Clerkship for four months under Rule 9 (a) (1931) before being permitted to take a reexamination, deprives the Appellant of the enjoyment of certain inalienable rights and property safeguarded by Art. I, Par. I of the New Jersey Constitution.

A State may impose a reasonable limitation on the right to practice a profession, but an arbitrary and unreasonable discrimination is contrary to law (16 C. J. Sec., p. 930). It has also been held the pursuit of happiness is a natural right embracing the right to pursue a lawful occu-

pation or business, protected by both the Federal and State Constitution.

> *Brennan* v. *United Hatters*, 73 N. J. L. 729;
> *Lucomsky* v. *Palmer*, 252 N. Y. S. 529, 531;
> *Premier Pabst Sales Co.* v. *State Board*, 13 Fed. Sup. 90.

As already stated (S. C., pp. 51-56), the petitioner is the holder of a license, of over ten years' standing, to practice in New York as an Attorney and Counsellor at Law. The right to practice law is not only a privilege (*In re Goldstein*, 220 N. Y. S. 473), but a special right (*Matter of Co-operative Law Co.*, 198 N. Y. 479, 483), which, when once acquired, is property (*In re O'Brien's Petition*, 63 Atl. 777, 79 Conn. 46; *Unger* v. *Landlord's Management Corp.*, 168 Atl. 229, 114 N. J. Eq. 68; *Cummings* v. *Missouri*, 4 Wall. 277, 320; *Ex parte Garland*, 4 Wall. 333, 379). It is also a personal right, limited to persons of good moral character, with special qualifications ascertained and certified after a long course of study, both general professional, after years of hard labor, and a thorough examination by a State Board appointed for that purpose (*Matter of Co-operative Law Co.* (*supra*); *Bradley* v. *Fisher*, 80 U. S. 335).

Regarding the right to engage in a lawful occupation or business this Court stated in *Brennan* v. *United Hatters*, 73 N. J. L. 729, 742:

> "* * * the notion is intolerable that a man should not be protected by the law in the enjoyment of property once it is acquired, but left unprotected by the law in his efforts to acquire it."

Upon the foregoing it submitted that that portion of Rule 11, so far as it relates to Attorneys from other States is unconstitutional and void and that Appellant comes within the Supreme Court Rules existing prior to February 1931.

POINT IV.

Appellant submits his answers on examination present satisfactory evidence of his knowledge of the law and practice established in this state, as prescribed by the rules.

Rule 3 of the Supreme Court (Rules 1929) is stated:

> "No person shall be recommended for license as an attorney unless he shall first submit himself to an examination as hereinafter provided, *and thereupon give satisfactory evidence of his learning in the law, and his knowledge of the practice thereof as established in this State* (Rule 2, 1905)."

Although notified he failed to pass the April 1939 examination, Appellant at all times was authoritatively and undisputably informed "that he had an excellent paper" and, that his rating was so close "that he could have passed or failed" (S. C., pp. 1-2, 53). Appellant is led to believe that his rating was within a fraction of a point of the 267 points requisite for a passing mark. It is upon this ground that he seeks a review as well as for the reason that Rule 3 (*supra*) does not contain the words "pass an examination".

Rule 3 simply requires that the applicant "give satisfactory evidence of his learning in the law, and his knowledge of the practice thereof as established in this State". Appellant submits and rests upon the answers to the Bar examination questions, now presented to this Court (S. C., pp. 25-49) as the "satisfactory evidence" required. Appellant further urges that in all fairness he has fully met the true requirements for admission as an Attorney in this State.

In essence, the *real question is* whether the Appellant is professionally fit to practice as an Attorney in this State.

A point more or less in rating should not be deemed to be so all important. Any slight deficiency in the Appellant's rating is not only supplemented by his ten years' practical experience as a Counsellor at Law in the State of New York, but more than counter-balanced by his knowledge, education, learning and ability, which are the very fundamentals upon which a favorable recommendation is founded. Certainly any assumption that a few points more in average would make anyone, including the Appellant, a better Attorney, is not only unsound, but is inferentially, if not demonstrably, unreal. *"Lex non curat de minimis."*

It is also contended that "border line" cases involving bar examinations are deserving of consideration, especially where the applicant is given his rating (*Salot* v. *State Bar of California*, 45 P. (2d) 203). While comity does not compel but merely persuades (*Polyckronos* v. *id.*, 17 N. J. Misc. 250, 255), Appellant submits that, since the State of New York admits on motion and without examination New Jersey Counsellors, who have practiced five years (Rules New York Court of Appeals, Rule II, Par. I), many such members of the Bar of this State today enjoying and profiting by the right to practice in the New York Courts, that the examination paper of the Appellant showing a substantial knowledge of the law is a satisfactory and reasonable compliance with the New Jersey Rules especially in the instant case where admission as an Attorney only, and not as Counsellor, is sought. The Court has granted a sort of equitable relief in matters of this kind (*In re Branch*, 70 N. J. L. 576; S. C., pp. 55, 56).

IN THE

Supreme Court of the United States

OCTOBER TERM, 1940.

No. 372.

WILLIAM G. WALL,

Petitioner,

vs.

STATE BOARD OF BAR EXAMINERS OF THE STATE OF NEW JERSEY,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE NEW JERSEY SUPREME COURT.

PETITIONER'S REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

WILLIAM G. WALL,
Attorney in pro. per.,
A member of the Bar of the United States Supreme Court.

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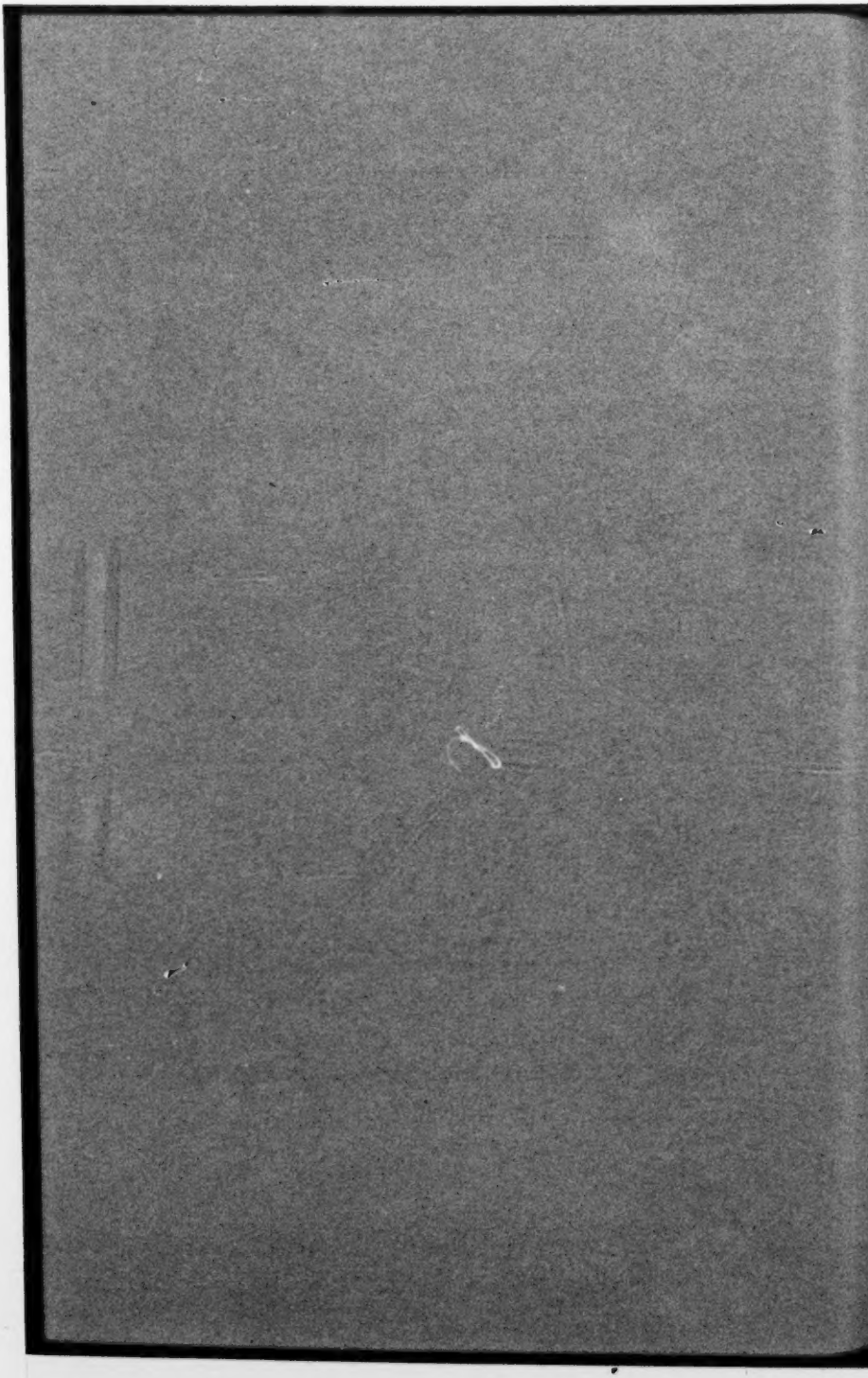

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Statement.

The Statement of respondent is substantially correct except it is to be noted that Rule 9(a) was in effect Rule 6(c) in December, 1924 (Petitioner's Brief, p. 53). It is also to be borne in mind that most of Petitioner's assertions have not been referred to, much less answered. Nor is there any reference to Petitioner's rating on his examination paper; nor is it denied that Petitioner had an "excellent paper" on his said examination. Many cases cited by Respondent are of help to the Petitioner.

As will be hereinafter shown, Respondent in its brief has entirely missed one of the most important points presented by the Petitioner.

In Reply to Argument I of Respondent.

It suffices to say that the admission of attorneys in New Jersey is not a distinctive attribute of the Supreme Court, which merely recommends an applicant for admission after examination. If this "distinctive attribute * * * has never been judicially or legislatively emasculated" then some high Appellate Court should act on it, especially when its exercise by the Court, either by virtue of "excess jurisdiction" or "usurpation of power", has resulted in a violation of an organic law. *St. Louis & S. F. R. Co.* v. *Quinette*, 251 F. 773, 775; *Clayton* v. *Tibbens*, 298 F. 18, 22; *Wagner* v. *Edgington Coal Co.*, 100 W. Va. 117, 120, 130 S. E. 94, 96.

Cases in which this Court has reviewed rules of the State Courts, and also the practice followed by certain associate Justices of State Appellate Courts are: *Pullman Palace Car Co.* v. *Speck*, 113 U. S. 84; *Bartemeyer* v. *Iowa*, 14 Wall. 26.

In Reply to Argument II of Respondent.

Petitioner cited *In re Hahn* and *In re Cosey* merely for proposition that the New Jersey Court of Errors and Appeals has entertained appeals in matters regarding attorneys (Petitioner's Brief, p. 35).

If the New Jersey Court of Errors and Appeals did not take jurisdiction over the State Supreme Court in the *Hahn* and *Cosey* cases, then why did it decide the questions that a Court of Chancery order of disbarment wrongfully affected the therein petitioner's standing as a counsellor at law, and, by the same token, his standing as an attorney at law? Having decided the Chancery phase of the case, why did not the Court of Errors and Appeals

refer the other phase of the matter to the Supreme Court, if the latter court has exclusive jurisdiction in all cases involving counsellors and attorneys, as is the claim made by the respondent?

The *Missouri K. & T. Ry. Co.* v. *McCann* and the other cases cited (Respondent's Brief, pp. 5-6) are not in point for the following reasons:

(a) There is no State Statute or Act of the Legislature involved in the instant case.

(b) The New Jersey Court of Errors and Appeals refused to take jurisdiction so that there is no construction by the Court of last resort.

(c) Simply a court rule is involved.

Contrarywise, this Court has at least intimated that it would take jurisdiction in a situation analogous to that of this Petitioner. *Selling* v. *Radford*, 243 U. S. 46.

At the outset Petitioner has acquired the right to practice law in the State of New York and before this Supreme Court. It is a property right (*In re O'Brien's Petition*, 63 Atl. 777, 63 A. L. R. 777, 780). The facts in the instant case are in no wise similar to those in *Keeley* v. *Evans*, 271 F. 521. A cursory reading of the latter case will prove this. The Respondent Board has made no allegation of objection to Petitioner "because of lack of professional character, conduct unbecoming, not that I am by nature 'turbulent or intemperate', as the facts showed in the *Keeley* case in which the appeal to the United States Supreme Court was dismissed 'on motion of counsel for appellant'" 257 U. S. 667. Now, therefore, since I have already practiced "*pro hac vice*" in New Jersey, is not the arbitrary refusal of the New Jersey tribunals to recommend me for a license in that State to be regarded

as tantamount to a constructive disbarment? We should deal with the substance rather than the form. In substance it has the same effect. Jurisdiction of the high Appellate Courts, including that of this Court to review instances of illegal disbarment or interference with the practice of law is well sustained. 10 Ann. Cas. 539, 544.

In New Jersey I was not permitted to be heard by or appear before Respondent regarding my rating, which has yet to be given me. My examination papers and present professional status show, as prescribed in *Ex parte Robinson*, 19 Wall. 505, "satisfactory evidence that I possess fair private character and sufficient legal learning to conduct causes in Courts for suitors." I have fulfilled all New Jersey requirements.

In *Selling* v. *Radford*, 243 U. S. 46, this Court held in a situation where a member of its Bar was disbarred by the Michigan Supreme Court, at page 50.

(a) That the United States Supreme Court has no authority to re-examine or reverse as a reviewing Court the action of the Supreme Court of Michigan in disbarring a member of the Bar of the Courts of that State for personal and professional misconduct.

(b) That the order of disbarment of the highest court in the State of Michigan was "not binding upon it as the thing adjudged in a technical sense."

(c) That the necessary effect of the Michigan Supreme Court order, as long as it stood unreversed, unless for some reason it is found that it ought not to be accepted or given effect to, has been to absolutely destroy the condition of fair, private and professional character, incompatible with the right to

continue as a member of the Bar of the United States Supreme Court.

The Court further held that on the "case presented" it was not its duty to review the action of the State Court of last resort—not wholly to abdicate its own functions by treating the Michigan judgment as the thing adjudged excluding all inquiry on the part of this Supreme Court, and yet not, in considering the right of one to be a member of the Bar of this Court, to shut its eyes to the status, as it were, of the unworthiness to be such a member, which the judgment must be treated as having established, unless for some reason it deems that consequence should not now be accepted. In other words this Court recognized the absence of fair private and professional character in the petitioner by virtue of the Michigan judgment alone but also recognized its duty to pass on the matter for itself.

This Court further stated at page 51, that it should recognize the condition created by the judgment of the State Court, unless from an intrinsic consideration of the State record, one or all of the following conditions should appear:

(1) That the State procedure from want of notice or opportunity to be heard was wanting in due process.

(2) That there was such an infirmity of proof as to facts found to have established the want of fair private professional character, as to give rise to a clear conviction on its part that it could not consistently with its duty accept as final the conclusion on that subject.

(3) That some other grave reason existed which should convince this Court that to allow the natural con-

> sequences of the judgment to have their effect, would conflict with the duty which rests upon this Court not to disbar except upon the conviction that, under the principles of right and justice, it were constrained to do so.

What better language of any Court could be found to be analogously applied to the situation prevalent in this Petitioner's case, in which all of these three conditions are patent?

In Reply to Argument III of Respondent.

Many constitutional questions are involved in this case.

The Respondent has completely missed the following important point (Respondent's Brief, pp. 7, 8 and 11).

The question is not what right, privilege or immunity is extended to practicing attorneys of other States to become practitioners in the State of New Jersey that is not likewise extended to attorneys and counsellors of the State of New York? Even in this regard, Petitioner has not been accorded the right, privilege and immunity accorded to Mr. Natelson (*In re Natelson* (Petitioner's Brief, pp. 9, 14, 20, 36)). This Petitioner has been subjected to different regulations. Under the New Jersey Supreme Court Rules Petitioner had to be a resident of New Jersey for at least six months prior to April, 1939. He is still such a resident, registered to vote in New Jersey at the coming National Election.

The real question is therefore what right, privilege or immunity is extended to New Jersey resident candidates for admission to the Bar that is not likewise extended to an attorney and counsellor at law of the State of New York, who is a resident of the State of New Jersey?

The answer is simple. Petitioner, among other things, is denied the equal protection of laws in New Jersey, unduly discriminated against and deprived of his property rights without due process of law by reason of the following:

(a) A different set of Rules applies to New Jersey candidates or why did the New Jersey Supreme Court abrogate Rule 11 on July 5, 1940? (Petitioner's Brief, p. 59.)

(b) Under the prior rules (Petitioner's Brief, p. 49), not abrogated until July 5, 1940 so far as Petitioner is concerned, and following the *Natelson* case, Petitioner should not be required to serve a clerkship —a most unreasonable requirement after over eleven years' practice.

(c) If the New Jersey Supreme Court meant Rule 9(a) to be applicable to attorneys who practiced in another State, it would have, especially after the *Natelson* and *Meigs* decisions, made Rule 9(a) more specific by adding the words "including an applicant who has practiced ten years in another State". Since such practitioners are not included in the rule, they are deemed to be excluded, particularly because Rule 6 (Petitioner's Brief, p. 57) mentions only "an attorney from another State" but is silent as to a "counsellor from another State".

The *Butcher* and *Hawker* cases (Respondent's Brief, p. 9) concern physicians, bills of attainder, *ex post facto* laws, and instances where the Legislature determined certain professional qualifications. These are not applicable to Petitioner's case.

In re Meigs (1931), 9 N. J. Misc. 234 (unreported in Atlantic), the Supreme Court cited with approval the

Natelson case (Petitioner's Brief, p. 37). Respondent is in error when it states (Respondent's Brief, p. 10) that before the *Natelson* decision there was no provision requiring an attorney from a foreign state to serve a clerkship after failure in examination. Rule 6(a), (b) and particularly (c) (Petitioner's Brief, pp. 52, 53) were in existence, for the Supreme Court held in the *Natelson* case that Rule 6(c) did not apply to attorneys from other States who had practiced ten years or more. Quite the contrary view was held in *In re Meigs* (1931), where Rule 6(c) was held applicable to a foreign attorney who had been only recently admitted in another jurisdiction. Accordingly, Petitioner submits he is not precluded from having the matter adjudicated in this Court since the decisions of the New Jersey Supreme Court are conflicting (Petitioner's Brief, p. 20).

It is important to state here that the *Bradwell* and *Lockwood* cases cited (Respondent's Brief, pp. 10-11) have an identical remarkable weakness. Nor does the *Lockwood* case (1893) dispose of this Petitioner's claim. Both these cases treat of the right of women attorneys to practice law in State Courts, which privilege they were denied by State Statutes. These cases were decided years before the enactment of the XIX Amendment (Woman Suffrage (1920)) to the United States Constitution and in effect have been automatically overruled. As to the *Hurwitz* case, it is sufficient to say that the New Jersey rules are not uniform. If they were, why were those which were conflicting abrogated July 5, 1940 by the Court itself?

In the final analysis, under the Rules (Petitioner's Brief, p. 49) existing prior to 1931 and existing thereafter by virtue of Rule 11 to the date of their abrogation on July 5, 1940, Petitioner merely had to give upon examination "satisfactory evidence of his learning in the

law and his knowledge of the practice thereof in New Jersey". This, Petitioner has done.

While the following may seem a remarkable departure from the citation of legal authorities, Petitioner believes that the language found in "Methods of Instruction—The Psychological, Pedagogical and Mechanical Factors" by Brig. Gen. C. H. Hodges, U. S. A., Infantry School, Fort Benning, Georgia, June 29, 1940, at page 27, is quite fitting here.

"Errors in Marking Examination Papers

> Scientific investigation has proved that the marking of examination papers is subjective; that is, different teachers, when working independently, tend to assign widely varying marks to the same paper. An investigation by Starch and Elliot is typical of many that have been made. These investigators selected a final examination in geometry, written by a student in one of the largest high schools in Wisconsin. An exact reproduction of this paper and a set of questions were sent to one hundred and eighty high schools in the North Central Association. It was requested that this paper be graded according to the practice and standards of the school by the principal teacher of mathematics. One hundred and sixteen replies were received. The papers showed evidence of having been marked with unusual care and attention.
>
> Of the one hundred and sixteen marks, two were above 90, while two were below 30. Twenty were 80 or above, while twenty other marks were below 60. Forty seven teachers assigned a mark passing or above, while sixty nine teachers thought the paper not worthy of a passing mark."

Could Respondent Board be so accurate as not to be mistaken in a point or so in grading the examination papers in question?

No set of facts as that in this Petitioner's case has ever been before this Court.

CONCLUSION.

The application for the writ of certiorari should be granted.

Respectfully submitted,

WILLIAM G. WALL,
Attorney in pro. per.,
A member of the Bar of the United States Supreme Court.

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IN THE

Supreme Court of the United States

October Term, 1940.

No. 372.

WILLIAM G. WALL,
Petitioner,

vs.

STATE BOARD OF BAR EXAMINERS OF THE STATE OF NEW JERSEY,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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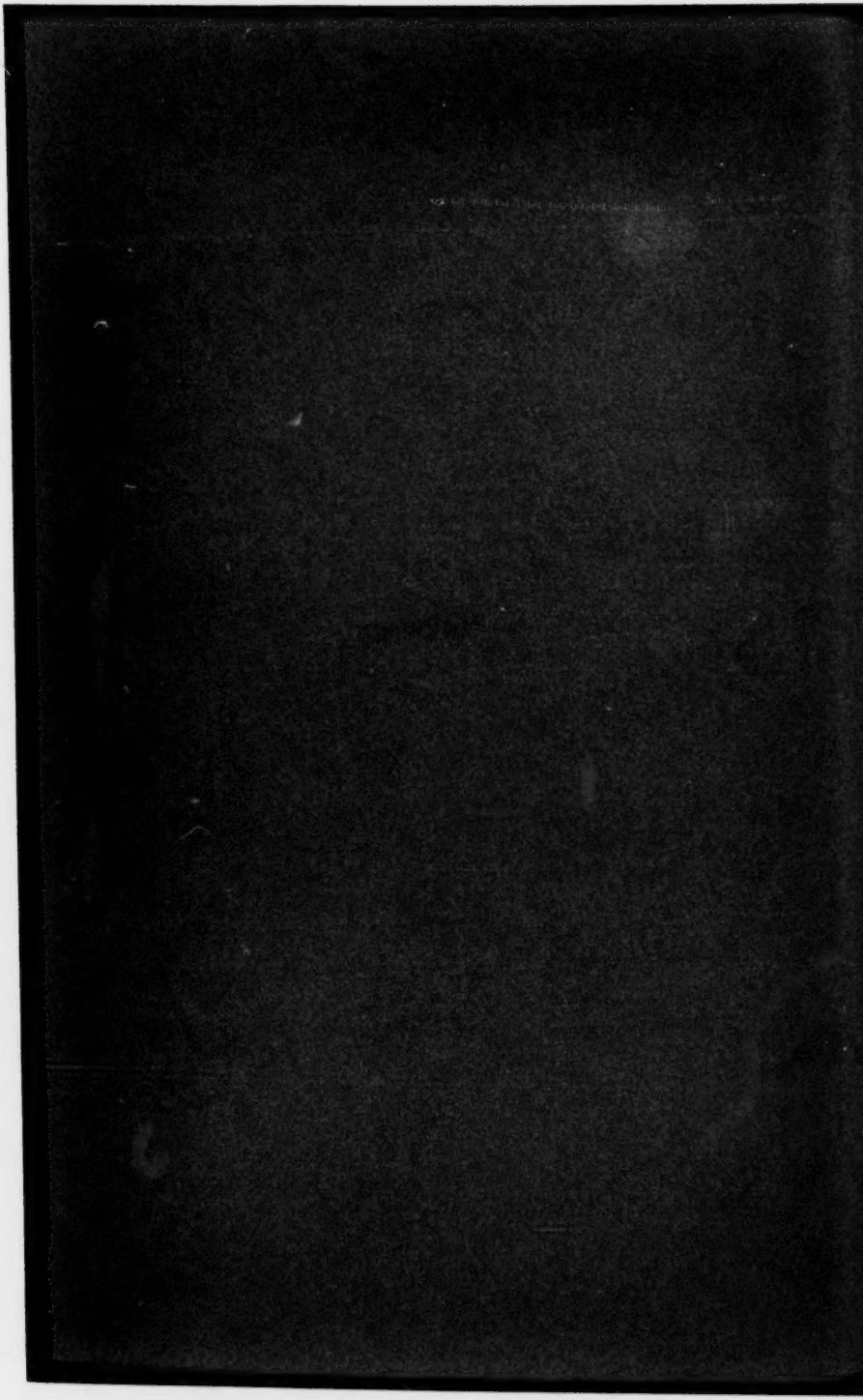

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October Term, 1940.

No. 372.

WILLIAM G. WALL, *Petitioner,* vs. STATE BOARD OF BAR EXAMINERS OF THE STATE OF NEW JERSEY, *Respondent.*	On Certiorari.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Statement of the Case.

The petitioner, William G. Wall, a practicing lawyer of the State of New York for over ten years, took and failed in the April 1939 examinations for admission to the bar of New Jersey. In September, 1939, William G. Wall, by petition to the New Jersey Supreme Court, sought "a review and re-marking of his examination papers on the April 1939 bar examination, and in the alternative, leave of the Court to direct the Clerk of the Supreme Court to add his name to the list of those who desire to take the examination to the New Jersey Bar on October 19, 20, 1939." (*R. 1.*) The matter came on to be argued by peti-

tioner at the October Term, 1939. In a *per curiam* opinion the New Jersey Supreme Court found "no fault with the result reached by the Board of Examiners determining that the petitioner had failed to pass such examination," and held that under its rule 9 (a), petitioner was not relieved from serving a clerkship of at least four months during the time intervening since the taking of his last prior examination, and that he must comply with rule 9 (a) before being admitted to take another examination (*R. 50*). Rule 9 (a) is as follows:

> "9 (a). When any applicant, including those applying under rule 6, (foreign attorneys) has taken an examination for attorney and failed in the same, he must, before he can take another examination, file with the Clerk of this Court proof that he has served a clerkship of at least four months during the time intervening since the taking of his last prior examination." (*Dec., 1924.*) (*Amended Feb., 1931.*)

The petitioner appealed to the New Jersey Supreme Court for reconsideration, under date of November 3, 1939 (*R. 51*), which was denied on November 17, 1939 (*R. 57*). He thereupon appealed to the New Jersey Court of Errors and Appeals (*R. 59*), "upon the grounds that the said New Jersey Supreme Court erred in affirming the decision and judgment of the New Jersey State Board of Bar Examiners and that the Supreme Court erred in denying petitioner-appellant relief in the within cause."

The matter before the New Jersey Supreme Court turned largely upon the construction and application of its rule 9 (a) hereinbefore quoted, requiring those who had failed in an attorneys' examination, before taking another examination, to serve clerkships of at least four months during the time intervening since the taking of the last prior examination. The petitioner stressed the point that the New Jersey Supreme Court erred in its construction of its rules and their application to him and erred in refusing him the relief which he sought in that court. In opposition

it was contended that these issues were not properly before the New Jersey Court of Errors and Appeals, and that such issues were entirely within the powers and jurisdiction of the New Jersey Supreme Court. The New Jersey Court of Errors and Appeals decided the issue adversely to the petitioner in an opinion dated April 25, 1940. (*R. 64.*)

ARGUMENT.

I.

The sole power to examine persons for admission to the Bar in New Jersey is vested exclusively in the New Jersey Supreme Court.

Mr. Justice Garrison, speaking for the New Jersey Supreme Court, sitting in *banc*, in *In re Harris, 88 N. J. L., page 18, at page 21,* summarized and followed the holding of our leading New Jersey case on the subject of the "distinctive attribute" of the Supreme Court in the matter of admission of persons to practice law, in the following language:

> "In the case of *In re Branch, 70 N. J. L. 537,* it was pointed out that in New Jersey the admission of attorneys is regulated by a local common law peculiar to this State, which, arising prior to the year 1776, had in the year 1844 become a distinctive attribute of the Supreme Court and constituted one of those 'powers' which the Constitution of that year declared 'except as herein otherwise provided shall continue as if this constitution had not been adopted.' *Article 10, paragraph 1.*"

As phrased in the *Branch case at page 575,* "it was, in fine, one of those 'powers,' which in addition to its 'jurisdiction,' that Court was, by that instrument, authorized to continue unless other provision was made therefore by the Constitution itself, which was not done." The mere fact that this "power" originated in custom is without significance. As stated in the *Branch case at page 575,* "nor

does the fact that the power in question is not specifically mentioned militate against its continuance." The *Branch* case held that the power of the Supreme Court to examine persons whom it might recommend for license from the Governor, was not subject to derogation by the Legislature.

While attorneys are officers of the Court and removable by the Court, in New Jersey, attorneys are not admitted to practice by the Supreme Court. They are commissioned or "licensed" by the Governor when he is assured that such licensees are possessed of the proper qualifications by recommendation to that effect from the Supreme Court. *In re Branch, 70 N. J. L. 537, at page 570. In re Raisch, 83 N. J. Eq. 82.*

The recommendation of the Supreme Court is based on an examination held by the Court, or under its supervision, under rules promulgated by it which, through the years, have been changed and modified by the Supreme Court in its absolute discretion, to meet the varying conditions and requirements of the periods for which such rules were adopted. This practice has been followed from the earliest period and has been a "distinctive attribute" of the Supreme Court, and, as such, existed in unqualified form at the time the Constitution was adopted and has been recognized and continued ever since and has never been judicially or legislatively emasculated.

II.

The New Jersey Court of Errors and Appeals has no authority to review the judgment of the New Jersey Supreme Court regarding qualifications of candidates for admission to the Bar.

The petitioner has cited *In re Hahn, 85 N. J. Eq. 510; 96 Atl. 589,* in support of his contention that this matter was appealable to the New Jersey Court of Errors and Appeals, but the *Hahn* case is only authority for the proposition that an order of the Court of Chancery, which debarred *(sic)* one from practice as solicitor and counsellor therein

was appealable because the Court of Chancery lacked jurisdiction to make such an order. The New Jersey Court of Errors and Appeals, speaking by the late Mr. Justice Swayze, said at page 514:

> "Whatever doubt there may be as to the right of appeal from a mere disciplinary order, there can be no doubt as to the appealability of such an order as this if the Court of Chancery was without jurisdiction to make it, since if this Court cannot restrain the excess of jurisdiction, no Court can, and the usurpation of power, if there is any would go uncorrected."

The New Jersey Court of Errors and Appeals concluded that the power to make the rule denying the petitioner's application was clearly inherent in the New Jersey Supreme Court and that the said Supreme Court was the only tribunal that was vested with the jurisdictional authority to enter the aforesaid rule (*R. 50*). Therefore the difference between the "excess of jurisdiction" and the "usurpation of power" by the Court of Chancery in the *Hahn* case is clearly differentiated from the instant case before this Court.

The petitioner also cites *In re Cosey, 85 N. J. Eq. 599; 96 Atl. 595* (*Petitioner's brief, p. 35*) but this case, like the *Hahn* case related to the disbarment of an attorney involving the same question of jurisdiction as the *Hahn* case; and the motion to dismiss the appeal in the *Cosey* case was denied for the reasons which appear in the *Hahn* opinion. The *Hahn* and *Cosey* cases have no relevancy to support petitioner's contention of the appealability of a Supreme Court order concerning the admission of attorneys.

This Court has repeatedly decided that it will disregard any challenge directed to the correctness of various rules of the State Court as to the meaning and effect of statutes enacted by the States and rules and regulations which the State may properly promulgate. Mr. Justice White, de-

livering the opinion in *Missouri, K. & T. Ry. Co.* v. *McCann, 174 U. S. 580; 19 Sup. Ct. 755, at page 758,* said:

> "The reasoning now relied on, then, is that * * * this Court should disregard the interpretation given to the State statute by the Court of last resort of the State, and hold that the statute means the very contrary of its import as declared by the Supreme Court of the State, and upon such construction decide that the State law is repugnant to the Constitution of the United States. But the elementary rule is that this Court accepts the interpretation of the statute of a State affixed to it by the Court of last resort thereof." *Sioux City, O. & W. Ry. Co.* v. *Manhattan Trust Co., 172 U. S. 642; 19 Sup. Ct. 879,* and authorities there cited.

This doctrine was cited with approval by Mr. Chief Justice Fuller in *Tullis* v. *Lake Erie & Western R. Co., 175 U. S. 348; 20 S. Ct. 136,* and has continued to receive the approbation of this Court and in *State of Missouri ex rel. Hurwitz* v. *North et al., Board of Health of State of Missouri, 271 U. S. 40; 46 S. Ct. 384, at page 385,* Mr. Justice Stone, speaking for this Court, declared:

> "Plaintiff's assignments of error assail the correctness of various rulings of the State Court as to the meaning and effect of the statute drawn in question. These assignments must be disregarded here, as upon writ of error to a State Court we are bound by its construction of the State law." See *West* v. *Louisiana, 24 S. Ct. 650; 194 U. S. 258; 48 L. Ed. 965; Gatewood* v. *North Carolina, 27 S. Ct. 167; 203 U. S. 531, 541; 51 L. Ed. 305; Watson* v. *Maryland, 30 S. Ct. 644; 218 U. S. 173; 54 L. Ed. 987; Schneider Granite Co.* v. *Gast Realty Co. 38 S. Ct. 125; 245 U. S. 288, 290; 62 L. Ed. 292.*

We insist that the inherent, constitutional and exclusive power of the New Jersey Supreme Court in the matter of admission of attorneys, lies wholly within the discretion of that Court and cannot be impaired, contracted or reviewed

by the New Jersey Court of Errors and Appeals; and therefore the petition for writ of certiorari in the instant matter should be dismissed.

III.

No Constitutional questions are herein presented.

(*a*) *Petitioner should be required to serve a clerkship in New Jersey.*

The petitioner contends that he should be given the benefits of the New Jersey Supreme Court rules in existence prior to February 14, 1931, and that having "matriculated in an approved law school" on September 16, 1925, and graduating therefrom on June 12, 1928, prior to the promulgation of Rule 11 in 1931 (*App. A*), he was not therefore required to serve a clerkship. It is maintained by the petitioner that the direct application of Rule 11 to him results in denying him the privileges and immunities guaranteed to citizens of the United States under section 2, paragraph 1 of article 4, and section 1 of Amendment Fourteen of the United States Constitution.

Now in view of these rules and regulations (*App. A*) what right, privilege or immunity is extended to the practicing attorneys of other States to become practitioners in the State of New Jersey that is not likewise extended to attorneys and counsellors-at-law of the State of New York? Obviously there is none and the petitioner has not been subjected to any different regulation. Nor have the petitioner's privileges and immunities been abridged within the first section of the Fourteenth Amendment. If the service is public the State may prescribe qualifications, and require an examination to test the fitness of any person to engage in and remain in the public calling. *Smith v. Texas, 233 U. S. 630, 636; 34 S. Ct. 681; 58 L. Ed. 1129; L. R. A. 1915 D, 677, Ann. Cas. 1915 D, 420.*

The case of *Dent* v. *West Virginia, 129 U. S. 114, 9 S. Ct. 231, 32 L. Ed. 623* is peculiarly instructive as it pertains to the power of the State to exact reasonable tests touching the qualification and fitness of applicants as a prerequisite to receiving the license of the State to engage in a public calling. It cannot be denied that an attorney's calling is public in character. He is an officer of the Court and his services are to the public. Surely the petitioner has not been treated differently from any other citizen from another State applying for license to practice law in this State. The requirements which the petitioner must meet are neither exceptional nor discriminatory; nor does the procedure prescribed deny to the petitioner the equal protection of the law.

It is to be noted that the petitioner did not apply for admission to the New Jersey bar examination until the April Term, 1939. Therefore, if a certain character, scholastic, and clerical standard had been established for attorneys of other States and such requisites were to remain in existence until October 1, 1931, and there had not been a full compliance on that date, then not even a privilege has been conferred and certainly no vested right has accrued. The petitioner cannot claim the benefits attaching to rules that have expired before he has attained their specific qualifications.

> One who asks the privilege of admission to the bar is simply seeking to obtain a right of property which he has not got. *In re O'Brien's Petition, 63 Atl. Rep. 777, at page 780.*

Rule 11 of the New Jersey Supreme Court provides that the ten preceding rules "shall not be deemed to affect the rights of candidates for admission as attorneys who * * * have matriculated in an approved law school prior to the date of promulgation, to wit, February 14, 1931 * * * except that these rules where applicable to attorneys of other States shall take effect October 1, 1931" (*App. A*).

In *Butcher et al* v. *Maybury, 8 Fed. (2d) 155, 159, Circuit* Judge McCamant in speaking for the Court, said:

> "The Legislature may prescribe qualifications, both as to character and learning, which will require those in practice to give up their occupation." *Dent* v. *West Virginia, 129 U. S. 114, 9 S. Ct. 231; Hawker* v. *New York, 170 U. S. 189, 18 S. Ct. 573, 42 L. Ed. 1002.*

This Court in *Hawker* v. *People of New York, 170 U. S. 189; 18 S. Ct. 573,* in speaking through Mr. Justice Brewer has declared, page 576:

> "It is not the province of the Courts to say that other tests would be more satisfactory or that the naming of other qualifications would be more conducive of the desired result."

Consequently the New Jersey Supreme Court was within its province of establishing certain definite qualifications in the January Term, 1938, and all applicants thereafter, including the petitioner in this cause, must meet the said requirements.

Our New Jersey Supreme Court deemed it necessary for an unsuccessful applicant to supplement his earlier clerkship with an additional four months to be served between the unsuccessful examination and the examination to which he may thereafter be admitted. Commenting on this phase of the litigation, the Court in *In re Meigs, 9 N. J. Misc. 234,* at page 235, said:

> "The very fact of their admission elsewhere and their failure here suggests that their deficiency is in that very practice and procedure which would be the heart of a New Jersey clerkship."

The petitioner very strongly urges that the opinion in *In re Natelson, 3 N. J. Misc. 549; 129 Atl. 183* relieves him of serving a clerkship between the examination that he failed and the next examination to which he may be admitted. It is to be observed that the *Natelson* case was

decided May 18, 1925, by the New Jersey Supreme Court and at that time there was promulgated the rules of the Supreme Court and rules of the State Board of Bar Examiners that had been revised July, 1924. In the rules before the New Jersey Supreme Court in the *Natelson* case for judicial construction, there was no provision requiring an attorney or counsellor-at-law from a foreign State to serve a clerkship after said applicant had failed to pass the New Jersey bar examination. Subsequent to the *Natelson* case, the rules of the Supreme Court of the State of New Jersey were revised in the January Term, 1938 and the present rule 9 (a) was adopted (*App. A*).

The petitioner contends that rule 9 (a) of the Supreme Court requiring clerkship of at least four months following his failure to pass the bar examination, has no application to him. Our New Jersey Supreme Court ruled directly on this question and declared that said rule did apply to the petitioner (*R. 50*). The New Jersey Courts having construed the application of the foregoing rule, the petitioner is precluded from having the same subject matter again adjudicated in this Court.

(*b*) *The right to practice law in State Courts is not such a privilege or immunity of a citizen of the United States as is guaranteed by the Fourteenth Amendment.*

After considering the rights, privileges or immunities secured by the Constitution and Laws of the United States and the right to practice in the Courts of a State, Mr. Justice Miller in speaking for this Court in *Bradwell* v. *Ill, 16 Wall. 130,* said:

> "But the right to the admission to practice in the Courts of a State is not one of them. This right in no sense depends on citizenship of the United States."

And also in the case of *Duncan* v. *Missouri, 152 U. S. 377; 14 S. Ct. 572,* this Court said:

> "Due process of law and the equal protection of the law are served if the laws operate on all alike and do not subject the individual to an arbitrary exercise of the powers of the government."

It cannot be said that there was any discrimination against this petitioner that would show he was not subject to the same rule as any other attorney or counsellor-at-law without the State of New Jersey. As in the case of *State of Missouri, ex rel. Hurwitz* v. *North et al., Board of Health of State of Missouri, supra,* this Court declared:

> "Nor did the statute deny to the plaintiff in error the equal protection of the laws. A statute which places all physicians in a single class, and prescribes a uniform standard of professional attainment and conduct, as a condition of the practice of their profession, and a reasonable procedure applicable to them as a class to insure conformity to that standard, does not deny the equal protection of the laws within the meaning of the Fourteenth Amendment." *Dent* v. *West Virginia, 9 S. Ct. 231; 129 U. S. 114; 32 L. Ed. 623; Reetz* v. *Michigan, 23 S. Ct. 390, 188 U. S. 505, 47 L. Ed. 563; Watson* v. *Maryland, supra.*

Certainly the attorneys and counsellors-at-law from foreign jurisdictions are placed in a single class and this rule is applicable to them as a class to insure conformity to that standard and therefore does not deny the equal protection of the laws within the meaning of the Fourteenth Amendment.

This Court has previously disposed of the petitioner's claim in this matter that he has been denied the privileges and immunities guaranteed to the citizens of the several States, in *Ex parte Lockwood, 154 U. S. 116; 14 S. Ct. 1082.* In that case the Code of Virginia, 1887, provides that "any person duly authorized and practicing as attorney at law in any State or territory of the United States, or in the District of Columbia, may practice as such in the Courts of this State (*section 3192*); and that every such person shall produce satisfactory evidence of his being so authorized, and take a prescribed oath (*section 3193*)". On the foregoing statutory enactment an application was made to the United States Supreme Court by Belva A. Lockwood for leave to file a petition for a writ of man-

damus, requiring the Supreme Court of appeals of Virginia to admit her to practice law in that Court; and she alleged that the only reason for rejection of her application was that she was a woman. Mrs. Lockwood had been for many years a member of the Bar of the United States Supreme Court and of the Supreme Court of the District of Columbia and the Bars of several other States in the Union. She had applied to the Supreme Court of Appeals of Virginia to be admitted to the practice of law in that Court and the Court denied her application. Mr. Chief Justice Fuller in delivering the opinion for this Court declared:

> "Our interposition seems to be invoked upon the ground that petitioner has been denied a privilege or immunity belonging to her as a citizen of the United States, and enjoyed by the women of Virginia, in contravention of the second section of article 4 of the Constitution, and of the Fourteenth Amendment."

It was therein decided that:

> "It was for the Supreme Court of Appeals to construe the statute of Virginia in question, and to determine whether the word 'person' as therein used is confined to males, and whether women are admitted to practice law in that commonwealth."

Leave was denied by the United States Supreme Court.

The *Lockwood* case being analogous to the instant matter before this Court and it being manifest that the New Jersey Supreme Court had the sole power to adjudicate the questions herein presented, the petition for this writ of certiorari should be denied.

CONCLUSION.

The application for the writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX A.

Rules of the Supreme Court of the State of New Jersey. Revised January Term, 1938.

6. No attorney from another State shall be recommended for license to practice in this State unless he shall have been a resident of this State for at least six months prior to his taking the examination for admission to the Bar and unless he shall have taken and passed such examinations, nor shall he be admitted to such examination unless he is an attorney in good standing in another State and shall have been entitled to practice in the highest Court of another State for at least five years nor unless he has complied with the provisions of rule 4 hereof; provided, however, that when such attorney shall have been actively engaged in the practice of law in another State for a period of at least ten years, compliance with the requirements of rule 4 relating to academic qualifications shall not be required. (*Rule 4, 1905.*) (*Amended June, 1923, and February, 1931.*)

9(a). When any applicant, including those applying under rule 6, has taken an examination for attorney and failed in the same, he must, before he can take another examination, file with the Clerk of this Court proof that he has served a clerkship of at least four months during the time intervening since the taking of his last prior examination. (*December, 1924.*) (*Amended February, 1931.*)

11. The foregoing rules, being numbers 2 to 10, inclusive, shall not be deemed to affect the rights of candidates for admission as attorneys who have filed their certificate of commencement of clerkship or have matriculated in an approved law school, prior to the date of promulgation, to wit, February 14, 1931, and such candidates shall be deemed to be under the rules of this Court previously existing, except that these rules where applicable to attorneys of other States, shall take effect October 1, 1931. (*February, 1931, as amended March, 1931.*)